TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1922

No. [redacted] 213

FEDERAL TRADE COMMISSION, PETITIONER,

vs.

SINCLAIR REFINING COMPANY.

WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Petition certiorari filed December 1, 1921.
Writ of certiorari filed January 21, 1922.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 630.

FEDERAL TRADE COMMISSION, PETITIONER,

vs.

SINCLAIR REFINING COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

INDEX.

	Original.	Print.
Order of May 3, 1920, authorizing the filing and service of petition to review order of Federal Trade Commission	1	1
Petition to review order of Federal Trade Commission	2	1
Exhibit A—Complaint	9	7
Exhibit B—Answer to complaint	15	11
Form of Sinclair Refining Co. equipment contract	16	12
Exhibit C—Report, findings, and conclusions	23	17
Form of Sinclair Refining Co. equipment contract	25	19
Order to cease and desist	28	21
Exhibit D—Motion for rehearing and review and to set aside order to cease and desist	31	23
Exhibit E—Motion to suspend order to cease and desist	34	26
Exhibit F—Application for extension of time to comply with order to cease and desist	37	28
Exhibit G—Letter dated March 24, 1920, Claude R. Porter, chief counsel, to Roy T. Osborn	38	29
Certificate of secretary of Federal Trade Commission	39	30
Proceedings before Federal Trade Commission:		
Resolution authorizing original complaint	40	30
Complaint	42	32
Answer to complaint	47	36
Form of Sinclair Refining Co. equipment contract	49	37
Notice of taking testimony	55	42

	Original.	Print
Evidence on behalf of Federal Trade Commission:		
Testimony of Charles L. Smith	62	4
Testimony of W. L. Zust	73	5
Testimony of H. E. Wormhoudt	81	6
Testimony of W. E. MacEwen	89	7
Testimony of Joseph F. Kunz	99	8
Testimony of O. L. Cordell	108	8
Testimony of Robert S. Colwell	119	9
Testimony of Seth C. Drake	127	10
Testimony of H. F. Bagby	136	10
Testimony of W. E. Williams	142	11
Testimony of L. B. Hancock	150	12
Testimony of J. M. Welch	157	12
Testimony of H. C. Wurster	165	13
Stipulation of facts	169	13
Report, findings, and conclusions	174	13
Order to cease and desist dated October 14, 1919	179	14
Motion for rehearing and review and to set aside order to cease and desist	182	14
Motion to suspend order to cease and desist	185	14
Application for extension of time to comply with order to cease and desist	188	15
Order denying motion of respondent for a rehearing and review and to set aside order to cease and desist	190	15
Order denying motion of respondent to suspend order to cease and desist	191	15
Order granting respondent an extension of time in which to comply with order to cease and desist	192	15
Acceptance of service of petition to review, and of order authorizing filing of said petition	195	15
Entry of appearance	196	15
Petitioner's motion for extension of time within which to file brief	197	15
Order of court granting petitioner's motion for extension of time	199	15
Respondent's motion for extension of time within which to file brief	199	15
Order of court granting respondent's motion for extension of time	202	15
Petition for advancement upon the calendar and for fixing a day for argument	204	15
Order of the court setting the case for hearing	204	16
Opinion by Page, Cir. J	206	16
Decree	212	16
Clerk's certificate	213	16
Writ of certiorari and motion	214	16

1 In the United States Circuit Court of Appeals for the Seventh Circuit.

SINCLAIR REFINING COMPANY, A CORPORATION, petitioner, *vs.* FEDERAL TRADE COMMISSION, RESPONDENT.	No. 2838.

Order authorizing filing and service of petition to review order of Federal Trade Commission.

Now this day comes Sinclair Refining Company, a corporation, petitioner, by its solicitors, Edw. H. Chandler, Roy T. Osborn, and W. Ray Allen, and presents its petition to review an order to cease and desist entered against the petitioner by Federal Trade Commission on the 14th day of October, A. D. 1919, in a cause pending before said commission entitled Federal Trade Commission v. Sinclair Refining Company, bearing docket No. 334.

The court being advised in the premises, it is ordered that said petition to review be filed and that a copy of said petition be forthwith served upon said Federal Trade Commission and that said Federal Trade Commission upon service of such copy forthwith certify and file in this court a transcript of the record in said cause.

Dated at Chicago, Illinois, this 3rd day of May, A. D. 1920.

GEO. F. PAGE, *Circuit Judge.*

(Endorsed:) No. 2838. In the U. S. Circuit Court of Appeals for the 7th Circuit. Sinclair Refining Company, a corporation, petitioner, vs. Federal Trade Commission, respondent. Order authorizing filing and service of petition to review order of Federal Trade Commission. Filed May 3, 1920. Edward M. Holloway, clerk.

2 In the United States Circuit Court of Appeals for the Seventh Circuit.

SINCLAIR REFINING COMPANY, A CORPORATION, petitioner, *vs.* FEDERAL TRADE COMMISSION, RESPONDENT.	No. ——.

Petition to review order of Federal Trade Commission.

To the Honorable Judges of said Court:

Your petitioner, Sinclair Refining Company, respectfully represents that it now is and has been for a period of more than three years next preceding the filing of this petition a corporation organized and existing under the laws of the State of Maine and authorized by law to transact business in the State of Illinois in this circuit, and that

it now is and has been at all times during said period carrying on business in the State of Illinois and in the other States comprising this circuit; that said business consists of the refining of petroleum and the marketing of the products thereof.

That on the 18th day of July, A. D. 1919, Federal Trade Commission issued its complaint before Federal Trade Commission against your petitioner alleging, in substance, that your petitioner's method and practice of leasing and loaning oil pumps and storage tanks or containers was in violation of section five (5) of an act of Congress approved September 26, 1914, and section three (3) of an act of Congress approved October 15, 1914, and requiring your petitioner to make answer and show cause why an order should not be entered by Federal Trade Commission requiring your petitioner to cease and desist from the violations of law charged in said complaint. A true copy of said complaint is hereto attached, made a part hereof, and marked "Exhibit A."

That within the time prescribed by said commission your petitioner filed with its answer to said complaint denying generally and specifically the allegations of said complaint charging violations of the sections of the statutes in said complaint specified; and also
3 alleging certain specific grounds in defense of and justification for the business methods and practices of your petitioner in the leasing and loaning of oil pumps and storage tanks or containers. A true copy of said answer is hereto attached, made a part hereof, and marked "Exhibit B."

That upon the issues thus joined said cause was heard before said commission in the city of Washington, District of Columbia, on the 26th, 27th, and 29th days of September, A. D. 1919, and in the hearing evidence was introduced on behalf of said commission and a stipulation of facts was entered into by counsel for the respective parties and filed in said cause, which said evidence and stipulation of facts and the contents thereof will more fully appear upon the filing of a transcript of the record of said cause by Federal Trade Commission in this court as by statute provided, and which evidence and stipulation of facts your petitioner prays may be deemed a part of this petition to the same intent and purpose as if same were herein set out in full; and upon said evidence and stipulation of facts said cause was submitted to said commission and by the commission taken under advisement.

That thereafter and on the 14th day of October, A. D. 1919, Federal Trade Commission made its report, findings, and conclusions and issued and caused to be entered in said cause its order directing your petitioner to cease and desist from:

"1. Directly or indirectly leasing pumps or tanks, or both, and their equipment for storing and handling petroleum products in the furtherance of its petroleum business, at a rental which will not yield to it a reasonable profit on the cost of the same after making due allowance for depreciation and other items usually considered when

leasing property for the purpose of obtaining a reasonable profit therefrom, and from doing any matter or thing which would have the same unlawful effect as that resulting from the practice herein prohibited and by reason of which this order is made.

"2. Entering into contracts or agreements with dealers of its petroleum products or from continuing to operate under any contract or agreement already entered into whereby such dealers agree or have an understanding that as a consideration for the leasing to them of such pumps and tanks and their equipments the same shall be used only for storing or handling the products of respondent, and from doing anything having the same unlawful effect as that resulting
4 from the practice herein prohibited and by reason of which this order is made.

"Provided, however, that as to such pumps and tanks and equipments as are now leased by respondent contrary to the orders contained in paragraphs 1 and 2 herein, respondent shall have four months from the date hereof to enter into new contracts or agreements with respect to the same which shall not be incompatible with the spirit and intent of this order.

"It is also ordered, under and by virtue of the authority conferred on the commission by paragraph B of section 6 of "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914, that the said Sinclair Refining Company, respondent, shall within 20 days after the expiration of the time allowed within which respondent shall have fully complied with the order to cease and desist, hereinabove set forth, report in writing to the Federal Trade Commission, fully setting forth the nature of the changes made in the conduct of its business with respect to the subject matter involved in the order to cease and desist, and shall be set forth in such report in complete detail the plan or plans adopted for the lease, loan, gift, or sale of any oil tanks and pumps for use in storing refined oil or gasoline, which plan or plans are in use or are proposed to be put in use, and also attach to such report any contracts used by the respondent in the conduct of such business."

A true copy of said report, findings, and conclusions and said order to cease and desist are hereto attached, made a part hereof, and marked "Exhibit C."

That on about March 3, 1920, and within the limitation periods contained in Federal Trade Commissions' said order, your petitioner filed with said commission its motion for rehearing and review and to set aside said order to cease and desist, specifying therein certain grounds therefor. That in said motion your petitioner prayed an opportunity to be heard in support thereof either by oral argument or written brief, but your petitioner was denied opportunity so to be heard. A true copy of said motion is hereto attached, made a part hereof, and marked "Exhibit D."

That on or about March 3, 1920, and within the limitation periods contained in Federal Trade Commissions' said order, your petitioner

filed with said commission its motion to suspend said order to
5 cease and desist, specifying therein certain grounds therefor, as will more fully appear from a true copy of said motion hereto attached, made a part hereof, and marked "Exhibit E."

That on or about March 3, 1920, and within the limitation periods contained in Federal Trade Commission's said order, your petitioner filed with said commission its application for extension of time to comply with said order to cease and desist, pending the hearing on said motions, and specifying therein certain grounds therefor, as will more fully appear from a true copy of said application hereto attached, made a part hereof, and marked "Exhibit F."

That your petitioner's said motion for rehearing and review and to set aside said order to cease and desist and said motion to suspend said order to cease and desist were denied by Federal Trade Commission and your petitioner was by said commission granted an extension for a period of sixty days beyond the time originally fixed in said order within which to make and file its report to said commission as required by said order, as appears from a communication of the chief counsel of said commission dated the 24th day of March, 1920, a true copy of which is hereto attached, made a part hereof, and marked "Exhibit G."

Your petitioner further represents that said order to cease and desist is erroneous and should be reviewed, reversed and set aside for many apparent errors and imperfections inasmuch as it appears from the record in said cause that Federal Trade Commission was without jurisdiction to hear, consider and determine the matters and things in its said complaint contained; that no unfair method or methods of competition in commerce are averred or alleged against your petitioner in said complaint; that no proof was made in said cause of any unfair method or methods of competition in commerce by your petitioner; that the findings of said commission as to the facts are not supported by testimony, and that no order to cease and desist should have been made or grounded thereon; but that said complaint should have been dismissed for the reasons aforesaid and for the reasons specifically set forth as follows:

1. The findings, conclusions, and order of the commission are:
   (a) Not supported by the evidence.
   (b) Contrary to the evidence.
   (c) Contrary to law.

2. There is insufficient evidence to support the finding, and
6 the commission erred in finding, that in the handling of oil pumps and storage tanks or containers, there is conducted by your petitioner a constant current of trade between various States of the United States and a transportation by your petitioner of said devices in interstate commerce.

3. It is immaterial to the issues of this cause, and it was error for the commission to find, that your petitioner leases and loans and has leased and loaned devices and equipment for storing and handling its products at an for monetary considerations below the

cost of purchasing and vending the same, when the business of leasing or loaning said devices and equipment and the returns received thereon are considered separate and apart from the general business and sales policy of your petitioner.

4. It is immaterial to the issue of this cause, and it was error for the commission to find:

(a) That your petitioner's form of contract set forth in said order provides that your petitioner's pumps, tanks or containers, and other equipment shall be used by the lessee only for the purpose of holding and storing your petitioner's petroleum products.

(b) That a small proportion of your petitioner's lessees handle similar products of your petitioner's competitors.

(c) That only a small proportion of your petitioner's lessees as handle similar products of your petitioner's competitors require or use more than a single pump outfit in the conduct of their business.

(d) That the practice of leasing said device requires a large capital investment.

(e) That many competitors of your petitioner do not possess sufficient capital and are not able to purchase or lease devices as your petitioner does, partly by reason of which such competitors have lost numerous customers to your petitioner.

5. There is insufficient evidence to support the finding, and the commission erred in finding, that the effect of the practice of leasing by contract such equipment, where such contract contains a provision restricting the use of the same to the storage and handling of your petitioner's products, may be to substantially lessen competition and tend to create for your petitioner a monopoly in the business of selling petroleum products.

6. There is insufficient evidence to support the commission's finding and conclusion that the methods of competition and the business practices set forth in the commission's findings as to the facts are unfair methods of competition in interstate commerce; and the commission erred in finding that the same are unlawful.

7. The commission erred generally in making and issuing herein its order to cease and desist directed to your petitioner; and it erred specifically in ordering your petitioner:

(a) To discontinue leasing pumps or tanks, or both, and their equipment for storing and handling petroleum products in the furtherance of your petitioner's petroleum business at a nominal rental, or at a rental that does not yield a monetary profit, when considered separate and apart from the general business and sales policy of your petitioner.

(b) To not enter into contracts or agreements, and to discontinue operating under any contract or agreement already entered into, whereby the lessees agree or have an understanding that the pumps and tanks and their equipment shall be used only for storing and handling of products of your petitioner.

8. The commission is without jurisdiction over the subject matter of said complaint and order.

9. The order of the commission is contrary to law, is inequitable and unjust:

(a) The commission is without jurisdiction to make said order.

(b) Said order is not uniform in its application or effect, and works a preference for those against whom an order has not been made and for those whom the commission has not sought to exercise its jurisdiction.

(c) The order of the commission tends to restrain and restrict trade, restrict competition, and produce a monopoly.

(d) The order of the commission is against public interest.

10. The commission erred in assuming that the proceeding herein would be to the interest of the public.

11. The commission erred in issuing and promulgating its order herein against your petitioner until it had heard and determined all the causes of like character pending before the commission.

For all of which errors and imperfections in said order to cease and desist appearing upon the face of the record in said cause, your petitioner has brought this petition for review to be relieved in the premises.

8 Forasmuch, therefore, as your petitioner is without remedy in the premises except in this court, as by statute in such case made and provided, and to the end that said Federal Trade Commission may be required to certify and file in this court a transcript of the record of said cause as provided by statute, and that the said order to cease and desist may be reviewed, reversed and set aside and no further proceedings taken thereon, and that your petitioner may have such other and further relief in the premises as the equities of the cause may require and as to your honors may seem meet.

May it please your honor to have a copy of this petition forthwith served upon said Federal Trade Commission and that said Federal Trade Commission be required, upon service of such copy, to forthwith certify and file in this court a transcript of the record of the said cause.

SINCLAIR REFINING COMPANY.
By EDW. H. CHANDLER
ROY T. OSBORN
W. RAY ALLEN,
Its Solicitors.

Address: 111 West Washington St., Chicago, Illinois.

EDW. H. CHANDLER,
ROY T. OSBORN,
W. ROY ALLEN,
Solicitor for Petitioner.

EXHIBIT A.

UNITED STATES OF AMERICA,
Before Federal Trade Commission, ss:

At a regular session of the Federal Trade Commission, held at its office in the city of Washington, D. C., on the 18th day of July, A. D. 1919.

Present: John Franklin Fort, chairman, Victor Murdock, Huston Thompson, William B. Colver, commissioners.

FEDERAL TRADE COMMISSION
vs.
SINCLAIR REFINING COMPANY. } Docket No. 334.

Complaint in the matter of the alleged violation of section 5 of the act of Congress approved September 26, 1914, and section 3 of the act of Congress approved October 15, 1914.

I.

The Federal Trade Commission, having reason to believe, from a preliminary investigation made by it, that the Sinclair Refining Company, hereinafter referred to as the respondent, has been using unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of the act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH ONE. That the respondent, Sinclair Refining Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine, with its principal office and place of business located at the city of Chicago, in the State of Illinois; that for more than four years last past respondent has been engaged in the business of purchasing and selling refined oil and gasoline and the leasing and loaning of oil pumps, storage tanks or containers, and their equipments, in various States of the United States and the District of Columbia in competition with numerous persons, firms, corporations, and copartnerships similarly engaged.

PARAGRAPH TWO. That the respondent, in the conduct of its business, as aforesaid, and as hereinafter more particularly described, purchases refined oil and gasoline, hereinafter referred to as "products," and also purchases oil pumps, storage tanks or containers, hereinafter referred to as "devices," the said devices being used to contain said products, the said products and devices then being handled and stored in the various States of the United States and transported in interstate commerce; that the aforesaid products

are sold and the aforesaid devices are leased or loaned by respondent to various persons, firms, corporations, and copartnerships: that in the conduct of its business of purchasing and selling such products and selling, leasing, or loaning such devices the same are constantly moved from one State to another by respondent and there is conducted by respondent a constant current of trade in such products and devices between various States of the United States: that there are numerous competitors of respondent who, in the conduct of their business in competition with respondent, purchase similar products and purchase and manufacture similar devices, the said devices being used to contain said products, the said products and devices then being handled and stored in the various States of the United States and transported in interstate commerce; that the aforesaid products are sold and the aforesaid devices sold, leased, or loaned by such competitors of respondent to various persons, firms, corporations, and copartnerships; that in the conduct of their business, as aforesaid, competitors of respondent constantly move such products and devices from one State to another and there is conducted by said competitors a constant current of trade in such products and devices between the various States of the United States; that respondent and many of its competitors have conducted their said business in a similar manner to that above described throughout the past four years.

PARAGRAPH THREE. That respondent in the conduct of its business, as aforesaid, with the effect of stifling and suppressing competition in the sale of the aforesaid products and in the sale, leasing, or loaning of the aforesaid devices and other equipments for storing and handling the same, and with the effect of injuring competitors who sell such products and devices, has within the four years last past sold, leased, or loaned and now sells, leases, or loans the said devices and their equipment for prices or considerations which do not represent reasonable returns on the investments in such devices and their equipments; that many such sales, leases, or loans of the aforesaid devices are made at prices below the cost of producing and vending the same; that many of such contracts for the lease or loan of such devices and their equipments provide or are entered into with the understanding that the lessee or borrower shall not place in such devices, or use in connection with such devices and their equipments, any refined oil or gasoline of a competitor; that only a small proportion of the dealers in gasoline and refined oil under such agreements and understandings deal also in similar products of respondent's competitors and that only a small proportion of such dealers require or use more than a single pump outfit in the conduct of their said business; that there are numerous competitors in the sale of such products who are unable to enter into such lease agreements or understandings because of the large amount of investment required to carry out such lease agreements as a competitive method of selling refined oil and gasoline; that there are numerous other competitors of respondent engaged in the manufac-

ture and sale of devices and their equipments who do not deal in refined oil and gasoline, and therefore do not sell or lease said devices and their equipments for a nominal consideration on a condition or understanding that their products only are to be used therein; that the said numerous competitors who were unable to enter into such lease agreements or understandings, as aforesaid, have lost numerous customers in the sale of refined oil and gasoline to respondent because of the business practices of respondent hereinbefore set forth; that the said numerous other competitors of respondent who manufacture and sell said devices and their equipments, but do not sell refined oil and gasoline, as aforesaid, have lost numerous customers and prospective customers for the purchase of their devices and equipments because of the said business practices of respondent, as hereinbefore set forth.

II.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the Sinclair Refining Company, hereinafter referred to as the respondent, has been using unfair methods of competition in interstate commerce, in violation of the provisions of section 3 of the act of Congress, approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH ONE. That the respondent, Sinclair Refining Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine, with its principal office and place of business in the city of Chicago, in the State of Illinois; that for more than four years last past respondent has been engaged in the business of purchasing and selling refined oil and gasoline and the leasing of oil pumps and storage tanks and their equipments in various States of the United States and the District of Columbia, in competition with numerous persons, firms, corporations, and copartnerships similarly engaged.

PARAGRAPH TWO. That the respondent in the conduct of its business, as aforesaid, and as hereinafter more particularly described, purchases refined oil and gasoline, hereinafter referred to as "products," and also purchases oil pumps, storage tanks or containers, hereinafter referred to as "devices," the said devices being used to contain said products, the said products and devices then being handled and stored in the various States of the United States and transported in interstate commerce. That such products are sold, and such devices, sold, leased, or loaned by respondent to various persons, firms, corporations, and copartnerships; that in the conduct of its business of purchasing and selling such products and selling, leasing, or loaning such devices, the same are constantly moved from one

State to another by respondent, and there is conducted by respondent a constant current of trade in such products and devices between the various States of the United States; that there are numerous competitors of respondent who in the conduct of their business
13 in competition with respondent purchase similar products and purchase and manufacture similar devices, the said devices being used to contain said products, the said products and devices then being handled and stored in the various States of the United States and transported in interstate commerce; that such products are sold and the aforesaid devices sold, leased, or loaned by said competitors in competition with respondent to various persons, firms, corporations, and copartnerships; that in the conduct of such business, as aforesaid, respondent's competitors constantly move such products and devices from one State to another and there is conducted by said competitors of respondent a constant current of trade in such products and devices between the various States of the United States; that respondent and many of its competitors have conducted their said businesses in a similar manner to that above described throughout the four years last past.

PARAGRAPH THREE. That the respondent for four years last past in the conduct of its business as aforesaid has leased and made contracts for the lease and is now leasing and making contracts for the lease of said devices and their equipments to be used within the United States, and has fixed and is now fixing the price charged therefor on the condition, agreement, or understanding that the lessees thereof shall not purchase or deal in the products of a competitor or competitors of respondent; and that the effect of such leases or contracts for lease, and conditions, agreements, or understandings may be and is to substantially lessen competition and tend to create a monopoly in the territories and localities where such contracts are operative.

Therefore, notice is hereby given you, the said Sinclair Refining Company, that the charges of this complaint will be heard by the Federal Trade Commission at its office in the city of Washington, D. C., on the 15th day of September, A. D. 1919, at 10:30 o'clock in the forenoon of that day, or as soon thereafter as the same may be reached, at which time and place you shall have the right to appear and show cause why an order should not be entered by the Federal Trade Commission requiring you to cease and desist from the violations of law charges in this complaint.

And you will further take notice that within thirty (30) days after the service of this complaint you are required to file with the commission an answer in conformity with Rule III of the Rules of Practice before the commission.

14 In witness whereof, the Federal Trade Commission has caused this complaint to be issued, signed by its secretary, and

official seal to be affixed hereto at the city of Washington, D. C., is 18th day of July, A. D. 1919.
By the commission.

(Signed) J. P. YODER,
Secretary.

(Signed) CLAUDE R. PORTER,
Chief Counsel for the Commission.

(Endorsed as follows:) United States of America. Before Federal Trade Commission. Docket No. 334. Federal Trade Commission v. Sinclair Refining Company, Respondent. Complaint In the matter of the alleged violation of section 5 of an act of Congress approved September 26, 1914, section 3 of an act of Congress approved October 15, 1914.
And notice of hearing thereof at the office of the Federal Trade Commission in the city of Washington, D. C., on the 15th day of September, 1919, at 10.30 o'clock a. m.

EXHIBIT B.

UNITED STATES OF AMERICA
Before Federal Trade Commission, ss:

FEDERAL TRADE COMMISSION
vs.
SINCLAIR REFINING COMPANY. } Docket No. 334.

In the matter of the alleged violation of section 5 of the act of Congress approved September 26, 1914, and section 3 of act of Congress approved October 15, 1914.

Answer to the complaint.

I.

PARAGRAPH ONE. Comes now the respondent, Sinclair Refining Company, and for answer to the first count of the complaint of the Honorable the Federal Trade Commission filed herein, denies each and every allegation thereof, except such as are hereinafter admitted.
PARAGRAPH TWO. Answer paragraph one of count one of said complaint, respondent admits that it is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine, with its principal business office located at the city of Chicago, in the State of Illinois, and is and has been engaged in the business of purchasing and selling refined oil and gasoline, hereinafter referred to as "products," as well as the general refining of oils and the marketing of refinery products, and further admits that it is now and has been engaged in the leasing and loaning of oil pumps, storage tanks, oil containers and their equipment, hereinafter referred to as "devices," in various states of the United States, (but not in the District

of Columbia) in competition with numerous other persons, firms, corporations, and copartnerships similarly engaged, but alleges that prior to the 25th day of January, 1917, the corporate name of respondent was the Cudahy Refining Company.

PARAGRAPH THREE. Answering paragraph two of count one of said complaint, respondent admits the allegations thereof with the exception of the allegation that it has been *n*egaged in the business mentioned for a period of the past four years, and alleges the fact
16 to be that its business existence began, under the name which respondent now bears, on the 25th day of January, 1917, as alleged in paragraph two of this answer.

PARAGRAPH FOUR. (*a*) Answering paragraph three of count one of said complaint, respondent admits that it does now lease and loan and has for the period of its business existence leased and loaned devices and equipment for storing and handling its products, and that the considerations received by respondent do not in all instances represent reasonable returns upon the investment in such devices and equipment, and also that such leases and loans of said devices and equipment are at times made at prices below the cost of purchasing and vending the same, when the business of leasing or loaning said devices and equipment and the returns received thereon are considered separate and apart from the general business and sales policy of the respondent.

(b) Further answering, respondent states that it has no knowledge of the cost to the manufacturer of producing and vending said devices and equipment.

(c) Further answering, respondent denies that its practice and custom of leasing and loaning said devices and equipment as hereinset forth has the effect of stifling and suppressing competition or of injuring competitors who sell the products and devices mentioned in said complaint.

(d) Further answering, respondent states that its form of contract with the users of such devices and equipment provides in substance that the same shall be used by such party for the sole purpose of storing and handling gasoline supplied by respondent, and for the information of this honorable commission the form of respondent's contract with such users, styled "Equipment Contract", reads as follows:

"Sinclair Refining Company.

"Equipment Contract.

"This agreement, made and entered into this _____ day of _____, 19__, between Sinclair Refining Company of _____ party of the first part, and _____ of the city of _____ State of _____, party of the second part, witnesseth:

"Whereas, party of the second part is now being supplied
17 with gasoline by the party of the first part and desires to install on his premises situated at _____ the following equipment for the better storing and handling of such gasoline: _____

"Now, therefore, in consideration of the premises and of the sum f one dollar by the party of the second part to the party of the st part (the receipt of which is hereby acknowledged), the above- med parties do hereby agree as follows:

"1. The above-described equipment shall be used by party of the cond part for the sole purpose of storing and handling the gasoline pplied by party of the first part.

"2. The party of the second part agrees, at his own cost, to main- in said equipment in good condition and repair so long as he shall ntinue to use same.

"3. The party of the second part agrees that he will not encumber r remove said equipment, or do or suffer to be done anything ereby said equipment or any part thereof may be seized, taken execution, attached, destroyed, or injured, or by which the title the party of the first part thereto may in any way be altered, stroyed, or prejudiced.

"4. In the event party of the second part should at any time use d equipment for any other purpose than the storing and handling gasoline supplied by the party of the first part, or should cease r ------ days to handle gasoline secured from the party of the st part the right or license of the party of the second part to said ipment shall at once terminate, and thereupon party of the first t shall have the right to enter upon said premises and remove d equipment and every part thereof.

"5. The party of the second part shall indemnify and save harm- s the party of the first part of and from any liability for loss, mage, injury, or other casualty to persons or property caused or sioned by any leakage, fire, or explosion of gasoline stored in d tank or drawn through said pump.

"6. This agreement shall terminate forthwith upon the sale or r disposition of said premises by party of the second part, and ny event upon the expiration of ---------- months from the e hereof; and in the event that by mutual consent said equip- ment remains in the possession of party of the second part at the expiration of said period, it is agreed that the same shall be used by party of the second part subject to all of the ns and conditions of this agreement, and such may be termi- ed at any time after the expiration of ---------- months from date hereof by the party of the first part giving ten days notice hat effect. Upon the termination of this license by whatever ns effected, the party of the first part shall have the right to r upon said premises and remove the said equipment and each every part thereof; provided, however, that the party of the nd part shall have the right and option at such time to pur- e said equipment by paying therefor the sum of ----------.

This contract is executed in triplicate, and it is agreed that the ract held by the party of the first part is to be considered the nal and to be the binding agreement in case the duplicate varies it in any particular.

"In witness thereof, the parties hereto have caused this agreeme to be executed the day and year first above written.

"SINCLAIR REFINING COMPANY,

"By _____,

"*Party of First Part.*

"_____,

"*Party of Second Part.*

"_____"

(e) Further answering, respondent states that it does not hav definite information as to what proportion of dealers in gasoline an refined oil who have been supplied with devices and equipment b respondent, as above stated, deal also in similar products of respon ent's competitors, nor of the proportion of such dealers who requir or use more than a single pump outfit in the conduct of their bus ness; further, that respondent has no information as to the numbe of its competitors, if any, who are unable to enter into such agre ment; further, that respondent has no knowledge as to whether ther are numerous, or any, other competitors of respondent engaged i the manufacture of such devices and equipment who do not deal i refined oil and gasoline, and who do not sell or lease such device and equipment for a nominal consideration on a condition or under standing that their products only are to be used therein; further

that respondent has no knowledge that numerous, or any com

19 petitors who are unable to enter into such lease agreements o understanding have lost numerous, or any customers in th sale of refined oil and gasoline because of the business practices o respondent as herein before set forth; further, that respondent ha no knowledge that numerous, or any, other competitors of respondent who manufacture and sell said devices and their equipment, but wh do not sell refined oil and gasoline, have lost numerous, or any customers or prospective customers for the purchase of their de vices or equipment because of the said business practices of the respondent as hereinbefore set forth.

II.

PARAGRAPH ONE. Comes now the respondent, Sinclair Refining Company, and for answer to the second count of the complaint of th honorable the Federal Trade Commission filed herein, denies each and every allegation thereof except such as are hereinafter admitted.

PARAGRAPH TWO. Answer paragraph one of count two of said complaint, respondent admits that it is a corporation organized existing, and doing business under and by virtue of the laws of the State of Maine with its principal business office located at the city o Chicago, in the State of Illinois, and is and has been engaged in the business of purchasing and selling refined oil and gasoline, and leas ing and loaning of oil pumps, storage tanks and containers and their equipment in various States of the United States, (but not in th

District of Columbia) in competition with numerous other persons, firms, corporations, and copartnerships similarly engaged, but alleges that prior to the 25th day of January, 1917, the corporate name of respondent was the Cudahy Refining Company.

PARAGRAPH THREE. Answering paragraph two of count two of said complaint, respondent admits the allegations thereof with the exception of the allegation that it has been engaged in the business mentioned for a period of the past four years, and alleges the fact to be that its business existence began on the 25th day of January, 1917, as alleged in paragraph two of this answer.

PARAGRAPH FOUR. (a) Answering paragraph three of count two of the complaint filed herein, respondent states that for the period of its business existence as hereinabove set forth, it has leased and made contracts for leasing, and is now leasing and makes contracts for the leasing of said devices and their equipment to be used within the several States of the United States in which respondent is authorized to transact business, which contracts provide in substance that the same shall be used for the sole purpose of storing and handling the gasoline supplied by respondent, as more fully alleged in paragraph four of the answer to count one of this complaint, in which paragraph respondent set out a copy of its "Equipment Contract," which contract is again referred to and made part of the answer to count two of this complaint.

(b) Further answering, respondent denies that the prices charged the users of such devices and equipment are fixed on the condition, agreement, or understanding that such lessees or users shall not purchase or deal in the product of a competitor or competitors of respondent; and further denies that the prices charged for such devices and equipment have any relation to, or bearing upon any restrictions as to the use to which such devices and equipment are to be put, but alleges the fact to be that the reason for restricting the use of said devices and equipment to the products supplied by respondent is to enable the public to know the kind and quality of gasoline they are purchasing, as such devices and equipment have signs or other marks or lettering thereon showing the brand of gasoline distributed through such devices and equipment.

(c) Further answering, respondent denies that it has, or has had, any agreement or understanding that the persons using the devices and equipment so supplied by respondent shall not purchase or deal in the products of a competitor or competitors of respondent, but alleges the facts to be that so far as any agreement the respondent may have with such users of said devices and equipment said users are at liberty to deal in any of the products of any competitor or competitors of respondent.

(d) Further answering, respondent denies that the effect of its contracts for the use of devices and equipment substantially lessens competition or tends to create a monopoly in the territory or locality where said contracts are operative.

Grounds of defense.

PARAGRAPH ONE. Respondent having fully answered the complaint filed herein, as grounds of defense and justification for the customs, usages, and practices as above stated, respect-
21 fully shows to this honorable commission that for many years past, and long prior to the business existence of respondent, the practice of leasing or loaning devices and equipment for less than a reasonable return upon the investment in such devices and equipment, when considered as a separate and distinct transaction, and restricting such devices and equipment to the use of the products of the concern supplying the same was followed by a large number of concerns engaged in the marketing of gasoline and kerosene, and that respondent in order to successfully compete in the marketing of its products found it necessary to lease and loan devices and equipment for the distribution of its gasoline and kerosene upon like terms and conditions as those employed by its competitors: and that this respondent did not inaugurate the practice complained of, nor by such practice introduce a new competitive factor in the marketing of such products.

PARAGRAPH TWO. Respondent further states that it refines in large quantities the products marketed by it, and expends great care and skill, and employes expensive processes and methods to the end that its products shall be of a uniform superior quality peculiarly adapted to the demands of the consuming public, and that because of the quality of its products, the business and sales policy adopted by the respondent in the marketing of same, and the extensive advertising of its products, it has built up a large trade therein and demand therefor by the consuming public, and that such consumers who favor the products of respondent are justly entitled to be protected by any safeguards that can be properly used in the marketing thereof which will assure them of getting the particular quality of brand of products they desire: and likewise respondent is entitled to such protection as can be afforded against the sale of similar products under representations, either express or implied, and that they are the products manufactured by respondent, and respondent has taken such steps as are afforded by law, and legitimate business practices, by means of trade-marks, trade names, trade brands and other devices and precautions, to the end that the consuming public may purchase respondent's products if it so desires: but respondent states that the character of gasoline and kerosene is such that there is no means of marking or identifying it when sold in bulk, except by distributing it through devices and equipment so marked as to show the
22 brand of the product being distributed and that the primary and only reason for restricting such devices and equipment to the use of respondent's products is for the protection of the consuming public in the purchase and the protection of respondent in the marketing of its products.

PARAGRAPH THREE. Respondent respectfully suggests, in the event this honorable commission shall promulgate an order directing respondent to cease and desist from any practices found by the commission to be unfair, that there should be embodied in such order provisions and directions by which respondent will be given reasonable opportunity to adjust and amend, or substitute new contracts for, respondent's existing equipment contracts, to the end that respondent and users of its devices and equipment shall not sustain financial and business losses in the readjustment of their business relations with reference to such devices and equipment, and to the end that respondent may maintain the good will and business cooperation of such users in the future marketing of respondent's products, and that proper and unobjectionable methods of business dealings of respondent with such users, and the public generally, may be disturbed and disorganized to the smallest possible extent.

Wherefore, having fully answered, respondent prays that it may go hence and have such relief as it may be entitled to in the premises.

(Signed) EDW. H. CHANDLER,
Tulsa, Oklahoma,
(Signed) ROY T. OSBORN,
111 West Washington Street, Chicago, Illinois,
(Signed) W. RAY ALLEN,
111 West Washington Street, Chicago, Illinois,
Attorneys for the Respondent, Sinclair Refining Company.

TO THE SECRETARY,
Federal Trade Commission.

Please direct all communications to Roy T. Osborn, counsel, Sinclair Refining Company, 111 W. Washington Street, Chicago, Illinois.

23 EXHIBIT C.

UNITED STATES OF AMERICA,
Before Federal Trade Commission, ss.

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 14th day of October, A. D. 1919.

FEDERAL TRADE COMMISSION.
vs.
SINCLAIR REFINING COMPANY. } Docket No. 334.

Report, findings, and conclusions.

A complaint having been issued by the Federal Trade Commission in the above-entitled proceeding and the respondent therein named having filed its answer herein, and the attorneys for the respective parties in said cause having stipulated to submit, and having sub-

mitted to the commission, subject to its approval, an agreed statement of facts in said cause which agreed statement was agreed should be taken in lieu of testimony as to those facts stipulated, and having been agreed that as to other facts the evidence to be taken in a formal hearing was to become the evidence as to such other facts as were charged in the complaint herein or made a defense in the answer, and the commission having duly appointed a time and place for the taking of testimony, and the respondent having appeared by counsel at the time and place so designated, and the commission having duly heard evidence on behalf of the commission and respondent, and the respondent having filed a brief by its attorney, and the commission having given due consideration to the complaint and answer herein and the stipulation as to the facts and the evidence submitted by the commission and by the respondent and being fully advised in the premises, reports and finds as follows:

1. That the respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine, with its principal business office located at the city of Chicago, in the State of Illinois, and is now and has been engaged in the business of purchasing and selling refined oil and gasoline, hereinafter
24 referred to as products, and is largely engaged in refining crude petroleum, and that it is now and has been since January 25, 1917, in connection with the aforementioned business, engaged in the leasing and loaning, but not in the manufacture, of oil pumps, storage tanks, and containers and their equipment, hereinafter referred to as devices, in various States of the United States, but not in the District of Columbia, in competition with numerous other persons, firms, corporations, and copartnerships similarly engaged; that prior to the 25th day of January, 1917, the corporate name of respondent was the Cudahy Refining Company.

2. That the respondent, in the conduct of its business, as aforesaid, and as hereinafter more particularly described, extensively refines petroleum and its products and purchases refined oil and gasoline, all hereinafter referred to as "products," and also purchases oil pumps, storage tanks or containers, hereinafter referred to as "devices," the said devices being used to contain said products, the said products and devices then being handled and stored in the various States of the United States and being transported in interstate commerce; that the aforesaid products are sold and the aforesaid devices are leased or loaned by respondent to various persons, firms, corporations, and copartnerships; that in the conduct of its business of purchasing and selling such products and selling, leasing or loaning such devices, the same are constantly moved from one State to another by respondent and there is conducted by respondent a constant current of trade in such products and devices between various States of the United States; that there are numerous competitors of respondent, who, in the conduct of their business in competition with respondent, purchase similar products and purchase and manufacture similar devices, the said devices being used to contain said products, the said products

and devices then being handled and stored in the various States of the United States and transported in interstate commerce; that the aforesaid products are sold and the aforesaid devices sold, leased, or loaned by such competitors of respondent to various persons, firms, corporations, and copartnerships, that in the conduct of their business, as aforesaid, competitors of respondent constantly move such products and devices from one State to another and there is conducted by said competitors a constant current of trade in such products and devices between the various States of the United States; that respondent has conducted its said businesses in a similar manner to that above described since January 25, 1917.

3. That respondent now leases and loans and has for the period of its business existence leased and loaned devices and equipment for storing and handling its products, and that the monetary considerations received by respondent do not represent reasonable returns upon the investment in such devices and equipment; and also that such leases and loans of said devices and equipment are made for monetary considerations below the cost of purchasing and vending the same when the business of leasing or loaning said devices and equipment and the returns received thereon are considered separate and apart from the general business and sales policy of the respondent; that respondent's form of contract with the users of such devices and equipment provides in substance that the devices and equipment shall be used for the sole purpose of storing and handling gasoline supplied by respondent, and that the uniform contract used by respondent for leasing such devices and equipment is in form, tenor, and substance as follows:

"Sinclair Refining Company.

"Equipment Contract.

"This Agreement, Made and entered into this_____day of _____, 19__, between Sinclair Refining Company of_____ party of the first part, and_____of the city of_____ State of_____, party of the second part, witnesseth:

"Whereas, party of the second part is now being supplied with gasoline by the party of the first part and desires to install on his premises situated at_____ the following equipment for the better storing and handling of such gasoline: _____

"Now, therefore, in consideration of the premises and of the sum of one dollar by the party of the second part to the party of the first part (the receipt of which is hereby acknowledged), the above named parties do hereby agree as follows:

"1. The above described equipment shall be used by party of the second part for the sole purpose of storing and handling the gasoline supplied by party of the first part.

"2. The party of the second part agrees, at his own cost, to maintain said equipment in good condition and repair so long as he shall continue to use same.

"3. The party of the second part agrees that he will not encumber or remove said equipment, or do or suffer to be done anything whereby said equipment or any part thereof may be seized, taken on execution, attached, destroyed or injured, or by which the title of the party of the first part thereto may in any way be altered, destroyed or prejudiced.

"4. In the event party of the second part should at any time use said equipment for any other purpose than the storing and handling of gasoline supplied by the party of the first part, or should cease for_____days to handle gasoline secured from the party of the first part the right or license of the party of the second part to said equipment shall at once terminate, and thereupon party of the first part shall have the right to enter upon said premises and remove said equipment and every part thereof.

"5. The party of the second part shall indemnify and save harmless the party of the first part to and from any liability for loss, damage, injury or other casualty to persons or property caused or occasioned by any leakage, fire or explosion of gasoline stored in said tank or drawn through said pump.

"6. This agreement shall terminate forthwith upon the sale or other disposition of said premises by party of the second part, and in any event upon the expiration of_____months from the date hereof; and in the event that by mutual consent said equipment remains in the possession of party of the second part at the expiration of said period, it is agreed that the same shall be used by party of the second part subject to all of the terms and conditions of this Agreement, and such may be terminated at any time after the expiration of_____months from the date hereof by the party of the first part giving ten days' notice to that effect. Upon the termination of this license by whatever means effected, the party of the first part shall have the right to enter upon said premises and remove the said equipment and each and every part thereof; provided, however, that the party of the second part shall have the right and option at such time to purchase said equipment by paying therefore the sum of_____.

27 "This contract is executed in triplicate, and it is agreed that the contract held by the party of the first part is to be considered the original and to be the binding agreement in case the duplicate varies from it in any particular.

"In witness thereof, the parties hereto have caused this agreement to be executed the day and year first above written.

"SINCLAIR REFINING COMPANY,

"By _____

"*Party of First Part.*

" _____

"*Party of Second Part.*

" _____"

4. That the contracts mentioned in the preceding paragraph also provide that such equipments shall be used by the lessee only for

the purpose of holding and storing the respondent's petroleum products; that a small proportion of such lessees handle similar products of respondent's competitors; and that only a small proportion of such lessees as handle similar products of respondent's competitors require or use more than a single pump outfit in the conduct of their said business; that the practice of leasing such devices requires a large capital investment; that many competitors of respondent do not possess sufficient capital and are not able to purchase and lease devices as repondent does as aforesaid, partly by reason of which such competitors have lost numerous customers to respondent; that the effect of the practice of leasing by contract such equipments, where such contracts contain the said provision restricting the use of the same to the storage and handling of respondent's products as aforesaid, may be to substantially lessen competition and tend to create for the respondent a monopoly in the business of selling petroleum products.

Conclusions.

That the the methods of competition and the business practices set forth in the foregoing findings as to the facts are, under the circumstances set forth herein, unfair methods of competition, in interstate commerce, in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and are violation of section 3 of an act of Congress, approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes."

[SEAL.] (Signed) VICTOR MURDOCK,
Acting Chairman.
HUSTON THOMPSON,
WILLIAM B. COLVER,
Commissioners.

Dated this 14th day of October, A. D. 1919.

UNITED STATES OF AMERICA
Before Federal Trade Commission, ss.

At a regular session of the Federal Trade Commission, held at its office in the city of Washington, D. C., on the 14th day of October, A. D., 1919.

FEDERAL TRADE COMMISSION
vs.
SINCLAIR REFINING COMPANY. } Docket No. 334.

Order to cease and desist.

A complaint having been issued by the Federal Trade Commission in the above-entitled proceeding and the respondent therein named having filed its answer herein, and the attorneys for the

respective parties in said cause having stipulated to submit, and having submitted to the commission, subject to its approval, an agreed statement of facts in said cause which agreed statement was agreed should be taken in lieu of testimony as to those facts stipulated, and it having been agreed that as to other facts the evidence to be taken in a formal hearing was to become the evidence as to such other facts as were charged in the complaint herein or made a defense in the answer, and the commission having duly appointed a time and place for the taking of testimony, and the respondent having appeared by counsel at the time and place so designated, and the commission having duly heard evidence on behalf of the commission and respondent, and the respondent having filed a brief by its attorney, and the commission having given due consideration to the complaint and answer herein and the stipulation as to the facts and the evidence submitted by the commission
29 and by the respondent and being fully advised in the premises reports and finds as follows: That having made its report and findings as elsewhere set forth, and having concluded upon such report and findings that the respondent has been guilty of unfair methods of competition in interstate commerce in violation of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that the respondent has violated section 3 of an act of Congress, approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," which report, findings and conclusions are hereby referred to and made a part hereof:

Now, therefore, it is ordered, that respondent, Sinclair Refining Company, shall cease and desist from:

1. Directly or indirectly leasing pumps or tanks or both and their equipments for storing and handling petroleum products in the furtherance of its petroleum business, at a rental which will not yeild to it a reasonable profit on the cost of the same after making due allowance for depreciation and other items usually considered when leasing property for the purpose of obtaining a reasonable profit therefrom, and from doing any matter or thing which would have the same unlawful effect as that resulting from the practice herein prohibited and by reason of which this order is made.

2. Entering into contracts or agreements with dealers of its petroleum products or from continuing to operate under any contract or agreement already entered into whereby such dealers agree or have an understanding that as a consideration for the leasing to them of such pumps and tanks and their equipments the same shall be used only for storing or handling the products of respondent, and from doing anything having the same unlawful effect as that resulting from the practice herein prohibited and by reason of which this order is made.

ovided, however, that as to such pumps and tanks and equip-
ts as are now leased by respondent contrary to the orders con-
d in paragraphs 1 and 2 herein, respondent shall have four
ths from the date hereof to enter into new contracts or agree-
ts with respect to the same which shall not be incompatible with
the spirit and intent of this order.

It is also ordered, under and by virtue of the authority con-
ferred on the commission by paragraph B of section 6 of
act to create a Federal Trade Commission, to define its powers
duties, and for other purposes," approved September 26, 1914,
the said Sinclair Refining Company, respondent, shall within
lays after the expiration of the time allowed within which re-
ndent shall have fully complied with the order to cease and
st, hereinabove set forth, report in writing to the Federal Trade
mission, fully setting forth the nature of the changes made in
conduct of its business with respect to the subject matter in-
ed in the order to cease and desist, and shall be set forth in
report in complete detail the plan or plans adopted for the
, loan, gift, or sale of any oil tanks and pumps for use in storing
ed oil or gasoline, which plan or plans are in use or are pro-
d to be put in use, and also attach to such report any contracts
by respondent in the conduct of such business.

Done at Washington, D. C., this 14th day of October, A. D. 1919.
y the Commission.

SEAL.]

(Signed) J. P. YODER,
Secretary.

Indorsed as follows:) United States of America. Before Fed-
Trade Commission. Docket No. 334. Federal Trade Commis-
vs. Sinclair Refining Company, respondent. Order to cease
desist. Entered by the Commission at its office in the city of
shington, D. C., on the 14th day of October, 1919.

EXHIBIT D.

ITED STATES OF AMERICA.
Before Federal Trade Commission:

DERAL TRADE COMMISSION
vs.
CLAIR REFINING COMPANY. } Docket No. 334.

tion for rehearing and review and to set aside order to cease and desist.

Comes now the respondent, Sinclair Refining Company, a Maine
poration, and for the following reasons and on the following
unds respectfully moves the honorable the Federal Trade Com-
sion as follows:

A. For a rehearing of said cause.
B. For a review of the order to cease and desist.
C. That the order to cease and desist be set aside.
And in support thereof respectfully shows:

Statement.

July 18, A. D. 1919, the commission caused a complaint to be issued against the respondent alleging in substance that the respondent's method and practice of leasing and loaning oil pumps and storage tanks or containers was in violation of section 5 of an act of Congress approved September 26, 1914, and section 3 of an act of Congress approved October 15, 1914. Within the time prescribed by the commission the respondent filed its answer to said complaint denying generally and specifically the allegations of the complaint charging violation of the sections of the statutes referred to. The case was heard by the commission in the city of Washington, D. C., on September 26, 27 and 29, 1919. Thereafter and on October 14, 1919, the commission issued an order to cease and desist directed to respondent wherein the commission made certain findings and conclusions, on which said order was based.

Respondent's reasons and grounds in support of motion.

1. The findings, conclusions and order of the commission are
32 (a) Not supported by the evidence.
(b) Contrary to the evidence.
(c) Contrary to law.

2. There is insufficient evidence to support the finding, and the commission erred in finding, that in the handling of oil pumps and storage tanks or containers, there is conducted by respondent a constant current of trade between various States of the United States and a transportation by respondent of said devices in interstate commerce.

3. It is immaterial to the issues of this cause, and it was error for the commission to find, that respondent leases and loans and has leased and loaned devices and equipment for storing and handling its products at and for monetary considerations below the cost of purchasing and vending the same, when the business of leasing or loaning said devices and equipment and the returns received thereon are considered separate and apart from the general business and sales policy of the respondent.

4. It is immaterial to the issues of this cause, and it was error for the commission to find:

(a) That respondent's form of contract set forth in said order provides that respondent's pumps, tanks, or containers, and other equipment shall be used by the lessee only for the purpose of holding and storing respondent's petroleum products.

(b) That a small proportion of respondent's lessees handle similar products of respondent's competitors.

(c) That only a small proportion of such lessees as handle similar oducts of respondent's competitors require or use more than a gle pump outfit in the conduct of their business.

(d) That the practice of leasing said devices requires a large pital investment.

(e) That many competitors of respondent do not possess sufficient pital and are not able to purchase or lease devices as respondent e, partly by reason of which such competitors have lost numerous stomers to respondent.

. There is insufficient evidence to support the finding, and the mmission erred in finding, that the effect of the practice of leasing contract such equipment where such contract contains a provision stricting the use of the same to the storage and handling of re- ndent's products, may be to substantially lessen competition and d to create for the respondent a monopoly in the business of selling petroleum products.

6. There is insufficient evidence to support the commission's findings and conclusion that the methods of competition and business practices set forth in the commission's findings as to the ts are unfair methods of competition in interstate commerce; and e commission erred in finding that the same are unlawful.

. The commission erred generally in making and issuing herein rder to cease and desist directed to the respondent; and it erred ecifically in ordering respondent:

(a) To discontinue leasing pump or tanks, or both, and their ipment for storing and handling petroleum products in the fur- rance of respondent's petroleum business at a nominal rental; at a rental that does not yield a monetary profit, when considered arate and apart from the general business and sales policy of ondent.

(b) To not enter into contracts or agreements, and to discontinue erating under any contract or agreement already entered into, reby the lessees agree or have an understanding that the pumps tanks and their equipment shall be used only for storing and lling of products of respondent.

. The commission is without jurisdiction over the subject matter said complaint and order.

. The order of the commission is contrary to law, is inequitable unjust:

(a) The commission is without jurisdiction to make said order.

(b) Said order is not uniform in its application or effect, and s a preference for those against whom an order has not been e and for those over whom the commission has not sought to ise its jurisdiction.

(c) The order of the commission tends to restrain and restrict e, restrict competition, and produce a monopoly.

(d) The order of the commission is against public interest.

. The commission erred in issuing and promulgating its order in against respondent until it had heard and determined all the ss of like character pending before the commission.

Respondent therefore respectfully moves the commission that it be granted a rehearing in this cause; that the commis-
34 sion review said cause and it is ordered herein; and that the commission set aside its said order to cease and desist.

Respondent also prays that it may be given opportunity to be heard on this motion, either orally, or by written brief, or both; and that in the interim said order to cease and desist, and the operation and effect thereof, be suspended.

Dated at Chicago, Illinois, this 11th day of February, 1920.

(Signed) EDW. H. CHANDLER,
Tulsa, Oklahoma,

(Signed) ROY T. OSBORN,
111 West Washington Street, Chicago, Illinois,

(Signed) W. W. RAY ELLEN,
111 West Washington Street, Chicago, Illinois,

Attorneys for the Respondent, Sinclair Refining Company.

TO THE SECRETARY,
Federal Trade Commission:

Please direct all communications to Roy T. Osborn, Counsel, Sinclair Refining Company, 111 West Washington Street, Chicago, Illinois.

EXHIBIT E.

UNITED STATES OF AMERICA,
Before Federal Trade Commission:

FEDERAL TRADE COMMISSION
vs.
SINCLAIR REFINING COMPANY. } Docket No. 334.

Motion to suspend order to cease and desist.

Comes now the respondent, Sinclair Refining Company, a Maine corporation, and for the following reasons and on the following grounds respectfully moves the honorable the Federal Trade Commission for an order suspending the commission's order to cease and desist, heretofore made and entered herein:

1. The respondent has filed herein motion praying that the
35 commission grant a rehearing in this proceeding and upon such rehearing review and set aside its said order to cease and desist. Respondent respectfully submits that pending the hearing and consideration of such motion the operation of said order should be suspended by the commission.

2. The contracts of the respondent, which were the subject of the complaint herein, are approximately five hundred (500) in number and are distributed over approximately sixteen (16) different States. In operating under said contracts the respondent encounters numerous competitors, some of which are without the jurisdiction of the

mmission, and others against which the commission has made no
der to cease and desist.

3. The order to cease and desist was made and entered October 14,
19. Respondent in good faith prepared a form of contract which
regarded as being in strict compliance with said order to cease
d desist, and which it proposed to substitute for those contracts
hich were the subject of the commission's complaint. Though not
quired so to do, respondent on November 21, 1919, formally sub-
tted to the commission respondent's said new form of contract and
quested an opinion from the commission approving the form so
mitted. The commission thereupon took the same under advise-
ent.

4. Said order to cease and desist allowed respondent four (4)
nths from the date thereof to enter into new contracts or agree-
nts in compliance therewith and respondent proceeded in good
th to secure the cancellation of existing contracts with those hold-
g its pumps and equipment and to substitute therefor contracts
on the form submitted to the commission upon a rental basis repre-
nting a reasonable profit upon the fair value of such equipment
upon the cost of the installation thereof, and respondent has suc-
eded in securing the cancellation of a number of such original con-
cts and the execution of new contracts on the form submitted to
commission and on the rental basis hereinabove specified.

5. Respondent is in receipt of a communication from the Honor-
e Claude R. Porter, chief counsel for the commission, dated Janu-
17, 1920, advising that in the judgment of the commission the
ntract as submitted is not free from objections, and is open to some
the same objections as were recently determined by the commis-
sion to apply to the contracts heretofore used by the respond-
ent, but such communication does not specify wherein the
form of contract submitted is not in accordance with the re-
rements of the said order.

6. The commission having indicated that respondent's submitted
ntract is objectionable, and respondent having presented to the
mmission a motion for a rehearing and review of the above-entitled
se, respondent respectfully represents that the commission should
spend its order to cease and desist pending a consideration of such
tion to review.

7. Upon information and belief respondent states as follows:

A. Complaints were issued by the commission against many of
spondent's competitors on or about the date complaint was issued
inst respondent, to wit, July 18, 1919.

B. In many of these causes no order to cease and desist has been
ed, although such order has issued against respondent.

C. Regardless of the order so issued, and notwithstanding the com-
nts filed against them, some of the respondent's competitors,
inst which no order has yet issued, continue to engage in the busi-
s of leasing and loaning equipment in manner and form com-
ned of by the commission.

8. The conditions set forth in subdivision 7 hereof place respondent on an inequality with its competitors and deprive it of commercial opportunities and privileges enjoyed by them, both as to old and new business. It is insisted this situation should not obtain.

Dated at Chicago, Illinois, this 11th day of February, 1920.

(Signed) EDW. H. CHANDLER,
Tulsa, Oklahoma,
(Signed) ROY T. OSBORN,
111 West Washington Street, Chicago, Illinois,
(Signed) W. RAY ALLEN,
111 West Washington Street, Chicago, Illinois,
Attorneys for the Respondent, Sinclair Refining Company.

TO THE SECRETARY,
Federal Trade Commission:

Please direct all communications to Roy T. Osborn, counsel, Sinclair Refining Company, 111 West Washington Street, Chicago, Illinois.

37 EXHIBIT F.

UNITED STATES OF AMERICA,
Before Federal Trade Commission:

FEDERAL TRADE COMMISSION
vs.
SINCLAIR REFINING COMPANY. } Docket No. 334.

Application for extension of time to comply with order to cease and desist.

Comes now the respondent, Sinclair Refining Company, a Maine corporation, and for the following reasons and on the following grounds respectfully moves the honorable the Federal Trade Commission as follows:

1. October 14, 1919, the commission made an order in the above entitled cause directing respondent to cease and desist. As to pumps and tanks and equipment as were then leased by respondent contrary to the findings and order of the commission, the respondent was granted four months from the date of said order to enter into new contracts or agreements with respect to the same, and within two days after the expiration of said four months period respondent was by said order required to report in writing to the commission fully setting forth the nature of the changes made in the conduct of its business with respect to the subject matter involved in said order.

2. It is a matter of evidence in this cause that respondent's contracts, which were the subject of the complaint herein, are approximately five hundred (500) in number and are distributed over approximately sixteen (16) different States.

3. It has proven a physical impossibility for respondent to comply fully and completely with the order of the commission in respect to all of respondent's said contracts, although it has done so with a large percentage thereof.

4. Respondent has filed herein a motion for an order of the commission suspending the commission's said order to cease and desist.

5. Respondent has filed herein a motion praying that the commission grant a rehearing in this proceeding and upon such rehearing that it review and set aside its said order to cease and desist.

Respondent therefore respectfully moves the commission that it be relieved from making and filing the report required by said order within said twenty-day period immediately succeeding the four months extending from and after October 14, 1919, pending action by the commission on respondent's said motions referred to in subdivisions No. 4 and 5 hereof.

Dated at Chicago, Illinois, this 2nd day of March, 1920.

(Signed) EDW. H. CHANDLER,
Tulsa, Oklahoma,

(Signed) ROY T. OSBORN,
111 West Washington Street, Chicago, Illinois,

(Signed) W. RAY ALLEN,
111 West Washington Street, Chicago, Illinois,
Attorneys for the Respondent,
Sinclair Refining Company.

THE SECRETARY,
Federal Trade Commission:

Please direct all communications to Roy T. Osborn, counsel, Sinclair Refining Company, 111 West Washington St., Chicago Illinois.

EXHIBIT G.

FEDERAL TRADE COMMISSION,
OFFICE OF THE CHIEF COUNSEL,
Washington, March 24, 1920.

ROY T. OSBORN, Esq.,
Counsel, Sinclair Refining Company,
111 West Washington Street, Chicago, Illinois.

DEAR SIR: I desire to inform you that the commission has denied your motion for rehearing and review and to set aside the order to cease and desist, heretofore entered in Docket 334, and also denied your motion to suspend the order to cease and desist in the same case.

The commission has extended the time of compliance with its order for a period of sixty days beyond the time originally fixed in said order.

Respectfully,

(Signed) CLAUDE R. PORTER,
Chief Counsel.

(Endorsed:) No. 2838. In the U. S. Circuit Court of Appeals for the 7th Circuit. Sinclair Refining Company, a corporation, petitioner, vs. Federal Trade Commission, respondent. Petition to review order of Federal Trade Commission. Filed May 3, 1920. Edward M. Holloway, clerk. Address communications to: Roy T. Osborn, counsel, Sinclair Refining Company, 111 W. Washington Street, Chicago, Illinois.

UNITED STATES OF AMERICA,
Before Federal Trade Commission, ss:

FEDERAL TRADE COMMISSION
vs.
SINCLAIR REFINING COMPANY. } Docket No. 334.

Certificate.

I, J. P. Yoder, secretary of the Federal Trade Commission, certify that the following is a full, true, and correct transcript of the record in the above-entitled proceeding, including the pleadings, testimony, exhibits, stipulation, the commission's report, findings as to the facts and conclusions, and orders therein; that this transcript is transmitted to the United States Circuit Court of Appeals for the Seventh Circuit pursuant to service upon the commission of a copy of a petition for review by Roy T. Osborn, attorney for the above-named respondent, on the 6th day of May, A. D. 1920.

[SEAL.] J. P. YODER, *Secretary.*

(Endorsed:) Filed Aug. 30, 1920, Edward M. Holloway, clerk.

40 UNITED STATES OF AMERICA,
Before Federal Trade Commission:

FEDERAL TRADE COMMISSION
vs.
SINCLAIR REFINING COMPANY, RESPONDENT. } Docket No. 334.

Transcript of the proceedings before the Federal Trade Commission—certified to the United States Circuit Court of Appeals for the Seventh Circuit, in accordance with the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and of section 11 of the act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes"—as a result of the petition filed in said court on May 3, 1920, by the attorneys for the Sinclair Refining Company, for a review of order to cease and desist entered by the Federal Trade Commission against said Sinclair Refining Company under date of October 8, 1919.

Federal Trade Commission. Docket No. 334. Section I. Copy of resolution authorizing original complaint, dated July 18th, 1919. Copy of original complaint, dated July 18th, 1919.

41 *Resolution authorizing original complaint.*

UNITED STATES OF AMERICA,
Before Federal Trade Commission, ss:

At a regular session of the Federal Trade Commission, held at its office in the city of Washington, D. C., on the 18th day of July, A. D. 1919.

Present: John Franklin Fort (chairman), Victor Murdock, Huston Thompson, William B. Colver, commissioners.

FEDERAL TRADE COMMISSION
vs.
SINCLAIR REFINING COMPANY.
} Docket No. 334.

Complaint in the matter of the alleged violation of section 5 of an act of Congress approved September 26, 1914, and of the alleged violation of section 3 of the act of Congress approved October 15, 1914.

Whereas the Federal Trade Commission has reason to believe that the Sinclair Refining Company has violated and is violating the provisions of section 5 of the Federal Trade Commission act, and of section 3 of an act of Congress approved October 15, 1914: Therefore be it

Resolved, That the Federal Trade Commission issue and serve upon the said Sinclair Refining Company its complaint, stating its charges in that respect in substantially the form hereunto annexed; and be it

Further Resolved, That notice be given to the said Sinclair Refining Company, as required by law, that the charges of said complaint will be heard by the commission at its office in the city of Washington, D. C., on the 15th day of September, 1919, at 10.30 o'clock in the forenoon of the said day, or as soon thereafter as the same may be reached.

Adopted by the commission.

[SEAL.] J. P. YODER, *Secretary.*

42 UNITED STATES OF AMERICA,
Before Federal Trade Commission, ss:

At a regular session of the Federal Trade Commission, held at its office in the city of Washington, D. C., on the 18th day of July, A. D. 1919.

Present: John Franklin Fort (chairman), Victor Murdock, Huston Thompson, William B. Colver, commissioners.

FEDERAL TRADE COMMISSION
vs.
SINCLAIR REFINING COMPANY.
} Docket No. 334.

Complaint in the matter of the alleged violation of section 5 of the act of Congress approved September 26, 1914, and section 3 of the act of Congress approved October 15, 1914.

I.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Sinclair Refining Company, hereinafter referred to as the respondent, has been using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH ONE. That the respondent, Sinclair Refining Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine, with its principal office and place of business located at the city of Chicago, in the State of Illinois; that for more than four years last past respondent has
43 been engaged in the business of purchasing and selling refined oil and gasoline and the leasing and loaning of oil pumps, storage tanks or containers and their equipments, in various States of the United States and the District of Columbia in competition with numerous persons, firms, corporations, and copartnerships similarly engaged.

PARAGRAPH TWO. That the respondent, in the conduct of its business, as aforesaid, and as hereinafter more particularly described, purchases refined oil and gasoline, hereinafter referred to as "products," and also purchases oil pumps, storage tanks or containers, hereinafter referred to as "devices," the said devices being used to contain said products, the said products and devices then being handled and stored in the various States of the United States and transported in interstate commerce; that the aforesaid products are sold and the aforesaid devices are leased or loaned by respondent to various persons, firms, corporations, and copartnerships; that in the conduct of its business of purchasing and selling such products and selling, leasing, or loaning such devices, the same are constantly moved from one State to another by respondent and there is conducted by respondent a constant current of trade in such products and devices between various States of the United States; that there are numerous competitors of respondent who, in the conduct of their business in competition with respondent, purchase similar products and purchase and manufacture similar devices, the said devices being used to contain said

roducts, the said products and devices then being handled and stored n the various States of the United States and transported in inter- tate commerce; that the aforesaid products are sold and the afore- aid devices sold, leased, or loaned by such competitors of respondent o various persons, firms, corporations and copartnerships; that in the onduct of their business, as aforesaid, competitors of respondent con- tantly move such products and devices from one State to another nd there is conducted by said competitors a constant current of trade n such products and devices between the various States of the United States; that respondent and many of its competitors have conducted heir said businesses in a similar manner to that above described hroughout the past four years.

PARAGRAPH THREE. That respondent in the conduct of its business, s aforesaid, with the effect of stifling and suppressing competition in the sale of the aforesaid products and in the sale, leasing, or loaning of the aforesaid devices and other equipments for stor- ing and handling the same, and with the effect of injuring com- petitors who sell such products and devices, has within the four years ast past sold, leased, or loaned and now sells, leases, or loans the said evices and their equipments for prices or considerations which do not epresent reasonable returns on the investments in such devices and heir equipments; that many such sales, leases, or loans of the afore- aid devices are made at prices below the cost of producing and vend- ng the same; that many of such contracts for the lease or loan of uch devices and their equipments provide or are entered into with he understanding that the lessee or borrower shall not place in such evices, or use in connection with such devices and their equipments, ny refined oil or gasoline of a competitor; that only a small propor- ion of the dealers in gasoline and refined oil under such agreements nd understandings deal also in similar products of respondent's ompetitors and that only a small proportion of such dealers require r use more than a single pump outfit in the conduct of their said usiness; that there are numerous competitors in the sale of such roducts, who are unable to enter into such lease agreements or under- tandings because of the large amount of investment required to arry out such lease agreements as a competitive method of selling efined oil and gasoline; that there are numerous other competitors of espondent engaged in the manufacture and sale of said devices and eir equipments who do not deal in refined oil and gasoline, and herefore do not sell or lease said devices and their equipments for a ominal consideration on a condition or understanding that their roducts only are to be used therein; that the said numerous competi- rs who were unable to enter into such lease agreements or under- andings, as aforesaid, have lost numerous customers in the sale of efined oil and gasoline to respondent because of the business prac- es of respondent hereinbefore set forth. That the said numerous her competitors of respondent who manufacture and sell said de- es and their equipments, but do not sell refined oil and gasoline, aforesaid, have lost numerous customers and prospective customers

for the purchase of their devices and equipments because of the said business practices of respondent, as hereinbefore set forth.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Sinclair Refining
45 Company, hereinafter referred to as the respondent, has been using unfair methods of competition in interstate commerce, in violation of the provisions of section 3 of the act of Congress, approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH ONE. That the respondent, Sinclair Refining Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine, with its principal office and place of business in the city of Chicago, in the State of Illinois; that for more than four years last past respondent has been engaged in the business of purchasing and selling refined oil and gasoline and the leasing of oil pumps and storage tanks and their equipments in various States of the United States and the District of Columbia, in competition with numerous persons, firms, corporations, and copartnerhips similarly engaged.

PARAGRAPH TWO. That the respondent in the conduct of its business, as aforesaid, and as hereinafter more particularly described, purchases refined oil and gasoline, hereinafter referred to as "products," and also purchases oil pumps, storage tanks or containers, hereinafter referred to as "devices," the said devices being used to contain said products, the said products and devices then being handled and stored in the various States of the United States and transported in interstate commerce. That such products are sold, and such devices sold, leased, or loaned by respondent to various persons, firms, corporations, and copartnerships; that in the conduct of its business of purchasing and selling such products and selling, leasing, or loaning such devices, the same are constantly moved from one State to another by respondent, and there is conducted by respondent a constant current of trade in such products and devices between the various States of the United States; that there are numerous competitors of respondent who in the conduct of their businesses in competition with respondent purchase similar products and purchase and manufacture similar devices, the said devices being used to contain said products, the said products and devices then being handled and stored in the various States of the United States and transported in interstate commerce; that such products are sold and the aforesaid devices sold, leased or loaned by such com-
46 petitors in competition with respondent to various persons, firms, corporations, and copartnerships; that in the conduct of such business, as aforesaid, respondent's competitors constantly move such products and devices from one State to another and there

conducted by said competitors of respondent a constant current of trade in such products and devices between the various States of the United States; that respondent and many of its competitors have conducted their said businesses in a similar manner to that above described throughout the four years last past.

PARAGRAPH THREE. That the respondent, for four years last past, in the conduct of its business as aforesaid, has leased and made contracts for the lease and is now leasing and making contracts for the lease of said devices and their equipments to be used within the United States, and has fixed and is now fixing the price charged therefor on the condition, agreement, or understanding that the lessees thereof shall not purchase or deal in the products of a competitor or competitors of respondent; and that the effect of such leases or contracts for lease, and conditions, agreements, or understandings, may be and is to substantially lessen competition and tend to create a monopoly in the territories and localities where such contracts are operative.

Therefore, notice is hereby given you, the said Sinclair Refining Company, that the charges of this complaint will be heard by the Federal Trade Commission at its office in the city of Washington, D. C., on the 15th day of September, A. D. 1919, at 10.30 o'clock in the forenoon of that day, or as soon thereafter as the same may be reached, at which time and place you shall have the right to appear and show cause why an order should not be entered by the Federal Trade Commission requiring you to cease and desist from the violations of law charged in this complaint.

And you will further take notice that within thirty (30) days after the service of this complaint, you are required to file with the commission an answer in conformity with Rule III of the Rules of Practice before the Commission.

In witness whereof, the Federal Trade Commission has caused this complaint to be issued, signed by its secretary, and its official seal to be affixed hereto at the city of Washington, D. C., this 18th day of July, A. D. 1919.

By the commission:

[SEAL.] (Signed) J. P. YODER,
Secretary.

(Signed) CLAUDE R. PORTER,
Chief Counsel for Commission.

47 Federal Trade Commission, Docket No. 334. Section II. Copy of Answer of Respondent filed September 2, 1919.

UNITED STATES OF AMERICA,
Before Federal Trade Commission, ss:

FEDERAL TRADE COMMISSION
vs.
SINCLAIR REFINING COMPANY. } Docket No. 334.

In the matter of the alleged violation of section 5 of the act of Congress approved September 26, 1914, and section 3 of act of Congress approved October 15, 1914.

Answer to the complaint.

BEFORE FEDERAL TRADE COMMISSION,
United States of America, ss:

FEDERAL TRADE COMMISSION
vs.
SINCLAIR REFINING COMPANY. } Docket No. 334.

In the matter of the alleged violation of section 5 of the act of Congress approved September 26, 1914, and section 3 of act of Congress approved October 15, 1914.

Answer to the complaint.

I.

PARAGRAPH ONE. Comes now the respondent, Sinclair Refining Company, and for answer to the first count of the complaint of the honorable the Federal Trade Commission filed herein, denies each and every allegation thereof, except such as are hereinafter admitted.

PARAGRAPH TWO. Answering paragraph one of count one of said complaint, respondent admits that it is a corporation organ-
48 ized, existing, and doing business under and by virtue of the laws of the State of Maine, with its principal business office located at the city of Chicago, in the State of Illinois, and is and has been engaged in the business of purchasing and selling refined oil and gasoline, hereinafter referred to as "products," as well as the general refining of oils and the marketing of refinery products, and further admits that it is now and has been engaged in the leasing and loaning of oil pumps, storage tanks and containers and their equipment, hereinafter referred to as "devices," in various States of the United States (but not in the District of Columbia), in competition with numerous other persons, firms, corporations, and copartnerships similarly engaged, but alleges that prior to the 25th day of January, 1917, the corporate name of respondent was the Cudahy Refining Company.

PARAGRAPH THREE. Answering paragraph two of count one of said complaint, respondent admits the allegations thereof with the exception of the allegation that it has been engaged in the business men-

tioned for a period of the past four years, and alleges the fact to be that its business existence began, under the name which respondent now bears, on the 25th day of January, 1917, as alleged in paragraph two of this answer.

PARAGRAPH FOUR. (a) Answering paragraph three of count one of said complaint, respondent admits that it does now lease and loan, and has for the period of its business existence leased and loaned, devices and equipment for storing and handling its products, and that the considerations received by respondent do not in all instances represent reasonable returns upon the investment in such devices and equipment, and also that such leases and loans of said devices and equipment are at times made at prices below the cost of purchasing and vending the same, when the business of leasing or loaning said devices and equipment and the returns received thereon are considered separate and apart from the general business and sales policy of the respondent.

(b) Further answering, respondent states that it has no knowledge of the cost to the manufacture of producing and vending said devices and equipment.

(c) Further answering, respondent denies that its practice and custom of leasing and loaning said devices and equipment as herein set forth has the effect of stifling and suppressing competition or of injuring competitors who sell the products and devices mentioned in said complaint.

(d) Further answering, respondent states that its form of contract with the users of such devices and equipment provides in substance that the same shall be used by such party for the sole purpose of storing and handling gasoline supplied by respondent, and for the information of this honorable commission the form of respondent's contract with such users, styled "Equipment Contract," reads as follows:

"Sinclair Refining Company.

"Equipment Contract.

"This agreement, made and entered into this _____ day of _____, 19__, between Sinclair Refining Company of _____, party of the first part, and _____ of the city of _____, State of _____, party of the second part, witnesseth:

"Whereas, party of the second part is now being supplied with gasoline by the party of the first part and desires to install on his premises situated at _____ the following equipment for the better storing and handling of such gasoline: _____

"Now, therefore, In consideration of the premises and of the sum of one dollar by the party of the second part to the party of the first part (the receipt of which is hereby acknowledged), the above-named parties do hereby agree as follows:

"1. The above-described equipment shall be used by party of the second part for the sole purpose of storing and handling the gasoline supplied by party of the first part.

"2. The party of the second part agrees, at his own cost, to main
tain said equipment in good condition and repair so long as he sha
continue to use same.

"3. The party of the second part agrees that he will not encumb
or remove said equipment, or do or suffer to be done anythin
whereby said equipment or any part thereof may be seized, taken o
execution, attached, destroyed, or injured, or by which the title
the party of the first part thereto may in any way be altered, d
stroyed, or prejudiced.

"4. In the event party of the second part should at any time us
said equipment for any other purpose than the storing and handlin
of gasoline supplied by the party of the first part, or should cease fo
---------- days to handle gasoline secured from the party of the firs
part the right or license of the party of the second part to said equip
ment shall at once terminate, and thereupon party of the first par
shall have the right to enter upon said premises and remove sai
equipment and every part thereof.

50 "5. The party of the second part shall indemnify and sav
harmless the party of the first part of and from any liabilit
for loss, damage, injury, or other casualty to persons or propert
caused or occasioned by any leakage, fire, or explosion of gasolin
stored in said tank or drawn through said pump.

"6. This agreement shall terminate forthwith upon the sale or othe
disposition of said premises by party of the second part, and in an
event upon the expiration of ---------- months from the date hereo
and in the event that by mutual consent said equipment remains i
the possession of party of the second part at the expiration of sai
period, it is agreed that the same shall be used by party of the secon
part subject to all of the terms and conditions of this agreement, an
such may be terminated at any time after the expiration of ----------
months from the date hereof by the party of the first part giving te
days' notice to that effect. Upon the termination of this license b
whatever means effected, the party of the first part shall have th
right to enter upon said premises and remove the said equipment an
each and every part thereof; provided, however, that the party
the second part shall have the right and option at such time to pu
chase said equipment by paying therefor the sum of ----------

"This contract is executed in triplicate, and it is agreed that th
contract held by the party of the first part is to be considered th
original and to be the binding agreement in case the duplicate vari
from it in any particular.

"In witness thereof, the parties hereto have caused this agreemen
to be executed the day and year first above written.

"SINCLAIR REFINING COMPANY.

"By ----------

"*Party of First Part.*

" ----------

"*Party of Second Part.*

" ----------"

(e) Further answering, respondent states that it does not have definite information as to what proportion of dealers in gasoline and refined oil who have been supplied with devices and equipment by respondent, as above stated, deal also in similar products of respondent's competitors, nor of the proportion of such dealers who require to use more than a single pump outfit in the conduct of their business; further, that respondent has no information as to the number of its competitors, if any, who are unable to enter into such agreements; further, that respondent has no knowledge as to whether there are numerous, or any, other competitors of respondent engaged in the manufacture of such devices and equipment who do not deal in refined oil and gasoline, and who do not sell or lease such devices and equipment for a nominal consideration on a condition or understanding that their products only are to be used therein; further, that respondent has no knowledge that numerous, or any, competitors who are unable to enter into such lease agreements or understanding have lost numerous, or any, customers in the sale of refined oil and gasoline because of the business practices of respondent as hereinbefore set forth; further, that respondent has no knowledge that numerous, or any, other competitors of respondent who manufacture and sell said devices and their equipment, but who do not sell refined oil and gasoline, have lost numerous, or any, customers or prospective customers for the purchase of their devices or equipment because of the said business practices of the respondent as hereinbefore set forth.

II.

PARAGRAPH ONE. Comes now the respondent, Sinclair Refining Company, and for answer to the second count of the complaint of the honorable, the Federal Trade Commission filed herein, denies each and every allegation thereof, except such as are hereinafter admitted.

PARAGRAPH TWO. Answering paragraph one of count two of said complaint, respondent admits that it is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine with its principal business office located at the city of Chicago, in the State of Illinois, and is and has been engaged in the business of purchasing and selling refined oil and gasoline, and leasing and loaning of oil pumps, storage tanks and containers and their equipment in various States of the United States (but not in the District of Columbia) in competition with numerous other persons, firms, corporations, and copartnerships similarly engaged, but alleges that prior to the 25th day of January, 1917, the corporate name of respondent was the Cudahy Refining Company.

PARAGRAPH THREE. Answering paragraph two of count two of said complaint, respondent admits the allegations thereof with the exception of the allegation that it has been engaged in the business mentioned for a period of the past four years, and alleges the fact to be that its business existence began on the 25th day of January, 1917, as alleged in paragraph two of this answer.

PARAGRAPH FOUR. (a) Answering paragraph three of count t of the complaint filed herein, respondent states that for the period its business existence as hereinabove set forth, it has leased and ma contracts for the leasing, and is now leasing and makes contracts f the leasing of said devices and their equipment to be used within t several States of the United States in which respondent is authoriz to transact business, which contracts provide in substance that t same shall be used for the sole purpose of storing and handling t gasoline supplied by respondent, as more fully alleged in paragra four of the answer to count one of this complaint, in which paragra respondent set out a copy of its "Equipment Contract," which co tract is again referred to and made part of the answer to count t of this complaint.

(b) Further answering, respondent denies that the prices charg the users of such devices and equipment are fixed on the conditio agreement or understanding that such lessees or users shall not pu chase or deal in the product of a competitor or competitors of r spondent; and further denies that the prices charged for such devi and equipment have any relation to, or bearing upon any restrictio as to, the use to which such devices and equipment are to be put, b alleges the facts to be that the reason for restricting the use of su devices and equipment to the products supplied by respondent is enable the public to know the kind and quality of gasoline they a purchasing, as such devices and equipment have signs or other mar or lettering thereon showing the brand of gasoline distributed throu such devices and equipment.

(c) Further answering, respondent denies that it has, or has ha any agreement or understanding that the persons using the devi and equipment so supplied by respondent shall not purchase or de in the products of a competitor or competitors of respondent, b alleges the facts to be that so far as any agreement the respond may have with such users of said devices and equipment said us are at liberty to deal in any of the products of any competitor or co petitors of respondent.

(d) Further answering, respondent denies that the effect
53 its contracts for the use of devices and equipment substantial lessens competition or tends to create a monopoly in the ter tory or locality where said contracts are operative.

Grounds for defense.

PARAGRAPH ONE. Respondent having fully answered the complai filed herein, as grounds of defense and justification for the custom usages, and practices as above stated, respectfully shows to this ho orable commission that for many years past, and long prior to th business existence of respondent, the practice of leasing or loanin devices and equipment for less than a reasonable return upon th investment in such devices and equipment, when considered as separate and distinct transaction, and restricting such devices an

uipment to the use of the products of the concern supplying the me was followed by a large number of concerns engaged in the rketing of gasoline and kerosene, and that respondent in order successfully compete in the marketing of its products found it essary to lease and loan devices and equipment for the distribu- n of its gasoline and kerosene upon like terms and conditions as ose employed by its competitors; and that this respondent did not augurate the practice complained of, nor by such practice intro- ce a new competitive factor in the marketing of such products.

PARAGRAPH TWO. Respondent further states that it refines in large antities the products marketed by it, and expends great care and ill, and employes expensive processes and methods to the end at its products shall be of a uniform superior quality, peculiarly apted to the demands of the consuming public, and that because f the quality of its products, the business and sales policy adopted the respondent in the marketing of same, and the extensive vertising of its products, it has built up a large trade therein and mand therefor by the consuming public, and that such consum- s who favor the products of respondent are justly entitled to be otected by any safegards that can be properly used in the market- g thereof which will assure them of getting the particular quality d brand of products they desire; and likewise respondent is enti- d to such protection as can be afforded against the sale of similar oducts under representations, either express or implied, that they e the products manufactured by respondent, and respondent has taken such steps as are afforded by law, and legitimate business practices, by means of trade-marks, trade names, trade brands, and other devices and precautions, to the end that the con- ming public may purchase respondent's products if it so desires; t respondent states that the character of gasoline and kerosene is h that there is no means of marking or identifying it when sold bulk, except by distributing it through devices and equipment so rked as to show the brand of the product being distributed, and t the primary and only reason for restricting such devices and uipment to the use of respondent's products is for the protection f the consuming public in the purchase, and the protection of spondent in the marketing of its products.

PARAGRAPH THREE. Respondent respectfully suggests, in the event s honorable commission shall promulgate an order directing re- ndent to cease and desist from any practices found by the com- ssion to be unfair, that there should be embodied in such order ovisions and directions by which respondent will be given reason- le opportunity to adjust and amend, or substitute new contracts r, respondent's existing equipment contracts, to the end that re- ondent and users of its devices and equipment shall not sustain ancial and business losses in the readjustment of their business lations with reference to such devices and equipment, and to the that respondent may maintain the good will and business coop- ation of such users in the future marketing of respondent's prod-

ucts, and that proper and unobjectionable methods of business dea
ings of respondent with such users, and the public generally, ma
de disturbed and disorganized to the smallest possible extent.

Wherefore, having fully answered, respondent prays that it ma
go hence and have such relief as it may be entitled to in the premise

EDW. H. CHANDLER,
Tulsa, Oklahoma,
ROY T. OSBORN,
111 W. Washington St., Chicago, Ill.,
W. RAY ALLEN,
111 W. Washington St., Chicago, Ill.,
Attorneys for the Respondent, Sinclair Refining Company.

TO THE SECRETARY,
Federal Trade Commission:

Please direct all communications to Roy T. Osborn, Counsel, Sin
clair Refining Company, 111 W. Washington Street, Chicago
Illinois.

55 Federal Trade Commission. Docket No. 334. Section III
Copy of notice of taking of testimony dated September 1
1919.

UNITED STATES OF AMERICA,
Before Federal Trade Commission, ss:

FEDERAL TRADE COMMISSION
vs.
SINCLAIR REFINING COMPANY. } Docket No. 334

Notice of taking of testimony.

SIR: Please take notice that the taking of testimony in support
the complaint of the Federal Trade Commission in the above entitl
proceeding and also on behalf of respondents together with argume
by attorneys for the commission and respondent, will begin at Was
ington, D. C., in the hearing room of the Federal Trade Comm
sion Building in said city on Friday the 26th day of Septemb
1919, at ten o'clock in the forenoon of that day.

Dated September 17, 1919.

Very truly, yours,

(Signed) HUSTON THOMPSON,
Commissioner.

To Roy T. Osborn, attorney for respondent, c/o Sinclair Refini
Co., 111 West Washington Street, Chicago, Illinois.

Due service of the above notice of taking of testimony is here
acknowledged this 19th day of September, 1919.

(Signed) ROY T. OSBORN,
Attorney for Respondent.

Federal Trade Commission. Docket No. 334. Section IV. Copy of testimony taken September 26 and 27, 1919, at Washington, D. C. Copy of testimony taken September 29, 1919, at Washington, D. C.

Before the Federal Trade Commission.

FEDERAL TRADE COMMISSION,
vs.
SINCLAIR REFINING COMPANY. } Docket No. 334.

FEDERAL TRADE COMMISSION,
vs.
OKLAHOMA PRODUCING AND REFINING CORPORATION OF AMERICA. } Docket No. 310.

FEDERAL TRADE COMMISSION,
vs.
IOWA OIL COMPANY. } Docket No. 336.

FEDERAL TRADE CORPORATION,
vs.
L. SMITH OIL AND GASOLINE COMPANY. } Docket No. 314.

FEDERAL TRADE COMMISSION,
vs.
BARTLES OIL COMPANY. Docket No. 332.

FEDERAL TRADE COMMISSION,
vs.
RICHARDSON LUBRICATING CO. } Docket No. 330.

Washington, D. C., September 26–27, 1919. Hale & Allen, official reporters, Whitford Building, Washington, D. C.

Before the Federal Trade Commission.

Docket No. 334.
FEDERAL TRADE COMMISSION,
vs.
SINCLAIR REFINING COMPANY.

Docket No. 310.
FEDERAL TRADE COMMISSION,
vs.
OKLAHOMA PRODUCING AND REFINING CORPORATION OF AMERICA.

Docket No. 336.
FEDERAL TRADE COMMISSION,
vs.
IOWA OIL COMPANY.

Docket No. 314.

FEDERAL TRADE COMMISSION,

vs.

C. L. SMITH OIL AND GASOLENE COMPANY.

Docket No. 332.

FEDERAL TRADE COMMISSION,

vs.

BARTLES OIL COMPANY.

Docket No. 330.

FEDERAL TRADE COMMISSION,

vs.

RICHARDSON LUBRICATING CO.

CONFERENCE ROOM, FEDERAL TRADE COMMISSION,
Washington, D. C., Friday, September 26, 191

The above-entitled matters came on for hearing before the Fed Trade Commission at 2 o'clock p. m.

Present: Commissioners Murdock (acting chairman), Thomps and Colver.

Present, also: Mr. Chester L. Zechiel, attorney-examiner, and Joseph H. Burdeau, attorney-examiner.

Appearances: Mr. Ray T. Osborn, 111 West Washington Str Chicago, Illinois, appearing for Sinclair Refining Company. W. E. MacEwen, 1050 Rose Building, Cleveland, Ohio, appearing Nash Refining Company.

58 *Proceedings.*

Commissioner THOMPSON. We would like to know for the rec just what companies are represented here, and also what compani have been subpœnaed, and the witnesses or representatives that ha come.

Mr. ZECHIEL. The companies that have been notified that th would be a hearing today are the Oklahoma Producing and Refin Corporation of America, in docket No. 310; the Sinclair Refin Company, docket No. 334; Bartles Oil Company, docket No. 3 Iowa Oil Company, docket No. 336; C. L. Smith Oil & Gasolene Co pany, docket No. 314; and the Richardson Lubricating Compa docket No. 330.

The Richardson Lubricating Company has appeared by their torney, Mr. Lyman McCarl. Mr. McCarl and I have been togeth part of the morning and we have the agreed statement, I think, fu ironed out.

The Sinclair Company is appearing by their attorney, Mr. Osbo We have agreed on most of the facts, but the economic situation not agreed to and there has been no attempt made to stipulate.

I do not know whether any of the other companies are appearing
y counsel or not.

The C. L. Smith Company is appearing by the president, C. L.
mith. I do not know about the others.

Are the other respondents represented?

(No response.)

Commissioner COLVER. We understand that these cases are not
nsolidated except that they are being heard simultaneously; that
ch case is being considered separately and there is not in fact a
nsolidation?

Mr. ZECHIEL. That is correct, sir, as I understand it.

Commissioner THOMPSON. How about the Bartles Company? Has
ere not been some appearance?

Mr. ZECHIEL. There has been an appearance, but not for the hear-
g this morning. There was a statement by their attorney yesterday
at he wanted to enter into an agreed statement of facts. Whether
not we will do that I do not know. He did say this, that if he did
t appear today he would waive all his rights as to cross-examina-
n, and also he was willing to consent to the joining of the cases
r the purpose of hearing.

Commissioner THOMPSON. Do I understand, then, that the only thing before the commission to-day is the question of the economic situation?

Mr. ZECHIEL. And proof as to jurisdiction. The practice has not
n admitted. There has been no proof, in fact, or stipulation of
kind with respect to the Iowa Oil Company, the Oklahoma Pro-
ing & Refining Corporation of America; and the C. L. Smith
Company do not admit jurisdiction. What you state is true
the rest of the cases.

ommissioner THOMPSON. Does the commission care to introduce
evidence at this time upon any of these points?

Mr. ZECHIEL. Yes, sir; we have our witnesses here.

ommissioner COLVER. If these cases are before us we are now to
any testimony with respect to the effect of these practices, the
omic effect of these practices?

Mr. ZECHIEL. And also with respect to jurisdiction.

ommissioner COLVER. Yes; with the opportunity of those com-
es that are represented here to cross-examine or produce wit-
s on that point; and then thereafter any point in any of these
s which is not covered by stipulation is subject of further hear-
y the commission or stipulation, if that can be arrived at.

. ZECHIEL. My understanding, Mr. Colver, about that was that
se the respondents did not appear to-day they were not to have
pportunity to enter a defense on any question.

mmissioner COLVER. No; but those who are here and do not stip-
as to jurisdiction, for example, will be heard on that sep-
ely.

. ZECHIEL. That is, at the close of the commission's evidence?

mmissioner COLVER. Yes.

Mr. ZECHIEL. That is right.

Mr. MACEWEN. I have been subpœnaed representing the Na Refining Company. I do not know that there is any complai against us or what the situation is. I happen to be their secreta and counsel and I am here for whatever purpose the commissi desires.

Mr. ZECHIEL. You were subpœnaed only as a witness on beha of the Government in one of the other cases.

The ACTING CHAIRMAN. Did you enter your appearance with t reporter for the Sinclair Company, Mr. Osborn?

Mr. OSBORN. Mr. Osborn, appearing for the Sinclair Company.

The ACTING CHAIRMAN. Mr. Zechiel, I would like to kn
60 what case this is and what the stage of the case is p sonally.

Mr. ZECHIEL. In the case in which I have called Mr. Smith as witness, it is that of the Federal Trade Commission against the C Smith Oil & Gasolene Company, a corporation doing busines the State of Missouri, selling refined oil and gasolene, and it h also in the past sold and leased or loaned oil tanks and pumps contain such oil or gasolene. The charge of the commission in th case, as in all the other cases, is that the C. L. Smith Compan or the respondent, has leased or loaned or given away oil tanks a pumps to be used in connection with the distribution and sale refined oil and gasolene under contracts or with an agreement understanding that the same should be used in connection with t sale and distribution of the oil product of the respondent only in this case, the C. L. Smith Company—and that these leases loans, whichever they were, or sales, were made without a reas able remuneration or compensation for the work involved or t goods that were leased or loaned. In other words, that these lea were made of these oil tanks and pumps at a nominal considerati or at least at not a sufficient consideration to make the practice leasing and loaning, unconnected with the sale and distribution gasolene and oil, a profitable business.

We are charging this under section 5 of the Federal Trade Co mission act as an unfair method of competition. We are also cha ing the same kind of practice under section 3 of the Clayton A and alleging that it is a tying contract in violation of that act wh forbids the sale or lease of any goods, wares, or merchandise t purchaser or lessor under the condition or understanding that goods of a competitor shall not be purchased or used at the sa time, where, it is further said in section 3 such practice shall s stantially lessen competition or tend to create a monopoly.

The ACTING CHAIRMAN. When did this complaint issue?

Mr. ZECHIEL. The complaint against the C. L. Smith Compa was issued—I do not remember the exact date. It was in June July.

The ACTING CHAIRMAN. Has the respondent made answer?

Mr. ZECHIEL. The respondent has made answer, and in the re of the respondent it is in a general way denied that the Fed

Trade Commission has any jurisdiction at all; that is, the C. L. Smith Company, the respondent, has said so because they are not doing an interstate business. He admits that he is guilty of the practice of leasing pumps under the conditions which the complaint charges, but denies that the effect of such leasing and loaning of pumps is to substantially lessen competition or tend to create a monopoly or is injuring their competitors in the sale of gasolene or competitors in the sale of oil tanks and pumps.

The ACTING CHAIRMAN. Has there been a hearing before this, before an examiner?

Mr. ZECHIEL. No hearing before an examiner. This is the first hearing in this case.

Besides the C. L. Smith Company, there is the Sinclair Refining Company. There has been an attempt made this forenoon in connection with the attorney for the Sinclair Company, Mr. Osborn, to agree on the facts in the Sinclair case where there is a similar complaint and an answer filed, to cover such part of the case as involves the question of jurisdiction. No attempt has been made to cover the evidence and the facts concerning the economic effect of this sort of a practice.

So far as I know, the Bartles Oil Company will not appear, but they have agreed by their attorney that they will waive their failure to appear.

In the case of the Iowa Oil Company, I understand—but I do not think it is a matter of record—that Mr. Clifford Thorne was to appear on their behalf. They were notified to appear here to-day for hearing. I have no personal knowledge of whether they have appeared or whether they intend to appear. The same charges are lodged against the Iowa Oil Company.

In the case of the Iowa Oil Company they admit generally all matters as to jurisdicton, that they are engaged in interstate commerce; they admit also that they are generally engaged in the practice of leasing and loaning oil tanks and pumps for a nominal consideration. They deny, however, that they have a tying contract within the meaning or the purview of section 3 of the Clayton act. They deny, also, injury to competitors, and deny that they are conducting their business in violation of section 5 of the Federal Trade Commission act.

Commissioner THOMPSON. I wish to state for the record that Mr. Clifford Thorne appeared before the commission several days ago and came to an oral agreement or understanding with the commission that he would appear to-day and represent his clients before the commission and cross-examine the commission's witnesses if he saw fit, and that he would like additional time, the time being fixed as October 3, I believe, in which to produce any evidence in behalf of his clients before the commission.

Commissioner COLVER. The exact date of his appearance here was Monday of this week.

Commissioner THOMPSON. Yes.

The ACTING CHAIRMAN. Are you ready for the witness, Mr. Zechiel?

Mr. ZECHIEL. Yes, sir.

The ACTING CHAIRMAN. Do you want the witness sworn?

Mr. ZECHIEL. Yes, sir.

CHARLES L. SMITH was called as a witness by and and on behalf of the Federal Trade Commission, and being first duly sworn, testified as follows:

Direct examination:

Q. (By Mr. Zechiel.) Where is your place of business?

A. St. Louis.

Q. What are your connections with the C. L. Smith Company?

A. President.

Q. What is the name of your company?

A. C. L. Smith Oil & Gasolene Company.

Q. In a general way, where in Missouri or elsewhere do you conduct business in the retailing of gasolene and oil?

A. Gasolene is confined strictly to St. Loius. We do a little scattering business around St. Louis in lubricating oily only. The filling stations are confined entirely to St. Louis.

Q. Do you do any business at all outside of the State of Missouri?

A. No, sir.

Q. In your position of president of the company you are acquainted with your competitors in your community?

A. In a general way, yes.

Q. Who are your competitors in your territory?

A. The Standard of Indiana, the Texas Oil Company, the Pierce Oil Corporation, the Automobile & Gasolene Company and the St. Louis Oil Company—that is, as far as filling stations are concerned or the gasolene business.

Q. My question is this: All those companies which sell or
63 wholesale refined oil and gasolene in your territory in competition with you. Is that list you have given the parties?

A. There is one other that I just thought of—the Independent Oil Company, a very small concern. They operate about two filling stations there.

Q. Where are the principal places of business of these concerns, do you know?

A. You mean their different filling stations?

Q. No; I mean their offices, their headquarters.

A. The Standard of Indiana and the Pierce——

Q. The Standard of Indiana is where?

A. St. Louis, Syndicate Trust Building.

Q. Their home office?

A. That is their general western office. I think the home office of the Standard of Indiana is in Chicago. The Pierce Oil Cor-

ation's home office is in New York City. The Texas Oil Company's ne office is in New York City. The home office of the Automobile iasolene Company is in St. Louis; and the St. Louis Independent l Company are in St. Louis.

Q. Do you know whether or not these companies ship their prod- s into the State of Missouri from other States than Missouri?

A. Yes, sure they do. The Pierce ships from Oklahoma, the ndard from Wood River, Illinois; the Texas—I do not know ere their refinery is. The Automobile & Gasolene Company——

Q. Their refinery is not in the State of Missouri?

A. No, sir; none of them have refineries in the State of Missouri.

Q. What about the other companies?

A. They are all jobbers, like myself. The Automobile & Gasolene mpany of St. Louis and ourselves buy from various refineries.

Q. They all ship their gasolene and oil out of the State of Mis- ri into the State of Missouri?

A. Yes.

Q. In connection with your gasolene and oil business do you dle oil tanks and pumps—I think that is the way you commonly er to them—in connection with the use of gasolene?

A. Yes, sir.

Q. Where do you get your oil tanks and pumps?

A. I think, without exception, we get them all from the S. F. Bowser Company.

Q. Where are they located?

A. Fort Wayne, Indiana.

Q. Do you order those shipped to you?

A. Shipped to me direct.

Q. To St. Louis?

A. Yes, sir.

Q. Do you have them shipped in in carload lots?

A. No, sir.

Q. When you have them shipped in, do you have them shipped ou directly?

. Yes, sir.

. You do not have them sent to your customers?

. No, sir.

. Do you order those tanks and pumps for a particular customer?

. Yes, sir.

. And deliver to the customer immediately after it arrives?

. Yes, sir.

. You install your own pumps?

. In most cases we do; yes.

. What are the conditions under which you lease or loan these ps at the present time?

. I might say this in that connection, that as far as the C. L. h Oil & Gasolene Company is concerned we have not made it a tice, since the company has been changed and reincorporated, to

loan or lease pumps or tanks. We fell heir to about eight or ten such stations from the Gibbs-Brown Company, our predecessors.

Q. How long have you been the owner of this company?

A. Two years next April.

Q. Are you acquainted with the business of the Gibbs-Brown Company, your predecessors?

A. Yes, sir.

Q. Under what conditions did they lease or loan their pumps, or sell them?

A. They generally took a long term lease, anywhere from seven to ten years, on the frontage of a garage for a nominal sum of, say, one dollar a year. They made the installation and paid the owner of the garage a certain commission per gallon of gasolene to operate the station for them.

65 Q. After you came into ownership of the company, did you install any oil tanks or pumps?

A. No, sir.

Q. You did not install any at all, you mean?

A. No, sir.

Q. Under what conditions or how did you take over these contracts of your predecessors?

A. We simply changed the name of the company or corporation.

Q. But the contracts remained in full force and effect?

A. Oh, yes.

Q. It is a fact that at the time you took over your predecessors' corporation you did have oil tanks and pumps leased to various customers of yours who were paying only a nominal consideration for the benefits received?

A. Yes, sir.

Q. Was there any condition or understanding in the lease or loan of those pumps concerning the use of gasolene of any other competitor of yours?

A. Yes, sir. It set forth that they were to use none but our gasolene and oil and greases.

Commissioner THOMPSON. Is there any contract here?

Mr. ZECHIEL. There is no contract as an exhibit. I was just going to ask the witness if he had a contract.

Q. (By Mr. ZECHIEL.) Do you have a copy of the contract?

A. No, sir; I have not.

Q. Will you furnish a copy of the contract?

A. I will be glad to mail you one, any one at all.

Q. Does the contract provide that the companies or the customers to whom you may loan or lease these pumps and tanks are not to use any gasolene of any other competitor at all?

A. Absolutely.

Q. They do not merely provide, then, that the gasolene of a competitor shall not be used in a pump or tank which you furnish?

A. No gasolene but ours shall be handled through this equipment, under the terms of the lease.

Q. If I understood you, at first you testified that, say, a customer, hn Smith, who has one of your leased outfits, is not to deal in the solene products of any other competitor so long as he has your outfit?

A. Oh, no, just with our outfit. He can install a pump belonging to somebody else.

Q. As a matter of fact, do any of your customers who have such a se agreement with your company have more than one outfit on the emises?

A. No.

Q. None at all?

A. No, sir.

Q. Do your customers who are under these lease agreements buy d sell gasolene products of a competitor of yours?

A. I do not know of a single instance where they have done it.

Q. How long have you engaged in the gasolene business?

A. About fifteen years.

Q. I will ask you to more particularly describe your experience those fifteen years.

A. Thirteen of the fifteen years I was engaged in various capaci- s with the Pierce Oil Corporation, from accountant to general lesman. I was general salesman when I left there.

Q. (By the ACTING CHAIRMAN.) I would like to know, just for r own information, and not dealing with the legal side, only to ar up my mind on the proposition: When the automobile first ne in, you were in the gasolene business. How did an automobile its gasolene in those days, just at the beginning?

A. We had gasolene tanks installed on the premises of the owner, e delivered it to them by tank wagon.

Q. When the first garage appeared, how was the automobile sup- ed?

A. The same way, through an underground tank. The tank gons would fill it every other day or so.

Q. My recollection is that it was a galvanized-iron concern with a pump attached to it.

A. There were some tanks of that caliber, yes. We still have some them.

Q. What was the evolution from that as the automobile business gressed?

A. First there was the small filling station with the one-gallon wser pump, or some other make of pump: one turn to the gallon.

Q. That was a spindly affair, painted red, with a wheel?

A. Yes, sir.

Q. Was there a further evolution from that?

A. Yes, sir. We got the five-gallon self-measuring pump. Since t time we have got various makes of pumps and more elaborate tions, and that sort of thing, until in the last ten years the auto- bile owner has not seen fit to buy his gasolene in any other way n through a filling station. There are some that have installed

their own underground equipment, supplying two hundred to five hundred gallons, in their garages at an expense, I think, of two or three hundred dollars. But that is very rare. I venture to say that ninety per cent of the buying public patronize the filling stations today.

Q. So that has been the development of the business?

A. From the filling station that we could construct at an expense of about two or three hundred dollars, in some old tin garage, or something like that, running up to $70,000 to $80,000.

Q. (By Mr. Zechiel.) Going back again to the specific terms of your contract, for a minute: Does your contract provide, and is it understood in the contract that customers to whom you loan these pumps and tanks under the terms of the contract you referred to are not to use either gasolene or refined oil or lubricating oil except those they buy from you?

A. Absolutely.

Q. During the time you have had these contracts with these various customers, were these various oil companies whom you have enumerated earlier in your testimony actively in competition with you in the city of St. Louis?

A. With the exception of the Standard, they were: yes.

Q. You mean the Standard of what?

A. The Standard of Indiana.

Q. So that at that time, when you were operating under these contracts, if any of these other companies except the Standard of Indiana had attempted to sell gasolene, or if they did attempt to sell gasolene to your customers, they would have been unable to do so?

A. Yes.

Q. (By Commissioner Colver.) On lubricating oils?

A. Yes, sir; or lubricating oils. We depend upon lubricating oil to carry the business.

68 Q. (By Mr. Zechiel.) Going back again to your testimony concerning the use of other pumps of competing oil companies and the purchasing of gasolene from competing oil companies, do I understand you to testify that no other competing company can put in a pump or does put in a pump or tank on the premises of the garage people or other distributors of your product where you have an oil pump or tank installed under this lease and tying contract?

A. No, sir.

The Acting Chairman. I am not clear on that. I wish you would clear that up. What do you mean by that? What is your question?

(The question referred to was thereupon read by the reporter as above recorded.)

The Witness. They can only do that by the customer violating his agreement with us.

Q. (By Mr. BURDEAU.) I understood you to say, Mr. Witness, that your contracts, whatever they were, contained no restriction against opening a place next door?

A. No; he can do that.

Q. I understood you to say that you more or less regarded his garage as your premises under these nominal lease agreements?

A. Yes, sir.

Q. You never knew of a case of one of them using a competitor's products?

A. No.

Q. (By Mr. ZECHIEL.) You testified that prior to your ownership of the C. L. Smith Oil & Gasolene Company you had had some ten years' experience with the Pierce Oil Company?

A. Thirteen years.

Q. Thirteen years? Did you have any other experience with any other oil companies?

A. No, sir.

Q. During the time when you were with the Pierce Oil Company were you acquainted with the distribution and use of oil tanks and pumps in connection with the sale of gasolene?

A. No; I was out of that department. I was confined strictly to the lubricating part.

Q. What has been the extent of your experience with respect to the use of oil tanks and pumps by garages and other distributors or retailers of refined oil and gasolene?

A. Since my connection with the Smith Oil Company.

Q. During that time have you had occasion to come in contact with other areas than your own district in St. Louis?

A. No, sir.

Q. What has been your experience within your territory of the practices of other oil companies in this respect, where they have contracts with garage men or other distributors of oil and gasolene, which contracts are similar to yours to which you have testified? Do these garages and other retailers of gasolene use the tanks and pumps of other companies or competitors of theirs?

A. Yes, sir—competitors of theirs? No.

Q. In other words, where a competitor of yours has installed a gasolene tank and pump with a garage man or any other vendee of gasolene, that particular oil tank or pump is the only one that the garage man or distributor uses?

A. Absolutely.

Q. Does such a garage man or distributor or vendee of gasolene sell the oil product of another oil man or oil company than the party who furnishes the pump under these contracts?

A. No, sir.

Q. You say at the present time and since you have owned this company you have not made any such lease agreements?

A. I have made agreements with various garages and one or two filling stations, but they installed their own equipment. I had agree-

ments to supply them with gasolene and oil for a period of time for a certain consideration where they themselves agreed to buy only our products. It may be a year, in some cases two years, but in no case since the Smith Oil & Gasolene Company came into existence have I given away or leased pumps and tanks.

Q. But you have made contracts with these various garages?

A. Oh, yes, sir; the same as we make on lubricating oil, to protect them a certain period of time.

Q. Do I understand that by the terms of these contracts they are not permitted to buy such products as are included in the terms of the contracts from competitors of yours?

A. Absolutely so.

Q. And the terms of those contracts are for how long?

A. In most cases a year; in some cases, two years.

Q. How many kinds of contract do you have through which you lease or loan the oil tank and pump?

70 A. Just one kind of a contract applies to gas and one kind to lubricating oil.

Q. Will you send a copy of each one of those contracts?

A. Yes, sir.

Q. (By Mr. BURDEAU.) Is the lease agreement and agency agreement embodied in the same instrument?

A. No, sir. The agency agreement—of course, I have not made any.

Q. (By Mr. ZECHIEL.) You say you have not made any contracts with respect to gasolene and oil tanks and pumps since you have owned the company?

A. No, sir.

Q. Why have you ceased the practice of leasing or loaning tanks and pumps?

A. Simply because it did not pay; it was not profitable.

Q. Will you explain that more in detail?

A. Well, we in St. Louis have had the pleasure of enjoying the lowest filling station market in the country for the last two or three years, and the margin has been so small that we barely made expenses by operating through the other fellow's equipment. In most cases we could charge it to advertising and let it go at that. But since they have made a differential in the St. Louis tank wagon market in the last couple of months there is a chance to get by and make a living. But in either case we can not afford to give away or lease these pumps.

Q. For how much are you incorporated?

A. $26,000.

Q. (By Commissioner COLVER.) Your employment in the Pierce Oil Company was in the lubricating department?

A. Our business was confined strictly to what we call smokestack or lubricating business.

Q. Were your sales of lubricating oil in part to garages and other distributors of gasolene who had these filling stations?

A. No, sir; I was handling the factory trade. They had a special corps of salesmen that confined themselves strictly to garages in which I was not interested.

Q. Were you informed about the selling of lubricating oils to the garages?

A. Just occasionally I talked it over.

Q. What was the effect of these filling station contracts on the sales by Waters Pierce Company of their lubricating oils?

A. Well, it was practically the same as it is in our case. If they made any concessions in the way of giving or loaning a pump or tank to a garage they compelled them, consequently, to give them a lubricating contract out of respect to that favor.

Q. Some little time ago you said that the lubricating oil carried the garage.

A. Yes, sir.

Q. Will you explain that to us?

A. The margin of profit on lubricating oil is a great deal more than it is in gasolene. There is not much profit through a filling station on gasolene. There is in tank wagon sales. I guess in the case of the larger companies probably there was a large margin for the little fellow.

Q. So that the gasolene being sold by means of the tank equipment in itself for the smaller company was not profitable?

A. That was the only way they could handle it.

Q. And was the means of opening the market for the lubricating oil?

A. Yes, sir.

Q. And in that lay your profits?

A. Yes, sir.

Q. (By Commissioner Thompson.) I wish you would describe just how you received this pump as a package? Is it made up of several parts when it is shipped to you?

A. The pump comes in, the pump itself, in one crate, and the small parts, such as the cover and the globe, and that sort of thing, make up another package. Then the tank, of course. In most cases we have a 550 or a 100 gallon tank that comes crated by itself.

Q. Do you break up the crate, or do you send it direct to your party?

A. We send it direct. It is consigned to us at St. Louis, and we take it from the freight depot right opposite the place it is going to be installed.

Q. And they set it up there?

A. Sometimes the Bowser people set it up. We have found it convenient and profitable for us to install rather than to wait.

Q. So the package is not broken until it gets to the place where you are going to install it?

A. No, sir.

Q. (By Mr. ZECHIEL.) How much money have your com-
72 pany invested in these pumps that you have installed under these leasing agreements?

A. I would say, counting depreciation since they have been there it would run about $5,000—not more than that.

Q. At the time you installed them about how much did you invest?

A. Of course, we not only had the pump or tank to take care of but in two or three instances they put up a great large arch, and that sort of thing—some kind of an attractive arrangement. The oil company spent probably $10,000 in equipment.

Q. How many of those have you now?

A. Eight.

Q. Do you know how many there were that were included in the $10,000 investment?

A. Yes, sir; there were about twelve.

Q. I believe you gave your capitalization as $26,000?

A. Yes, sir.

Mr. ZECHIEL. You may cross-examine.

Commissioner THOMPSON. I want to ask you one question.

Q. (By Commissioner THOMPSON.) I want to read to you a paragraph from an affidavit by one Seth C. Drake, filed with the Commission in Docket No. 85, Federal Trade Commission versus Standard Oil Company of Indiana. The part of the paragraph which I wish to read is as follows:

"Affiant further says that he has been connected with the sales department of respondent for many years last past and was so connected with it when the practice of loaning and leasing tanks and pumps to customers was inaugurated, and said practice of leasing or loaning pumps and tanks, for a nominal consideration, or free of charge, was inaugurated by the competitors of the respondent, and respondent thereafter adopted such practice merely as a matter of self-defense, to meet in good faith the competition offered it by its competitors; that such practice has been and is contrary to the judgment of the sales managers of respondent, and is in their judgment bad merchandising."

I call your particular attention to this phrase:

"That such practice has been and is contrary to the judgment of the sales managers of respondent and is in their judgment bad merchandising."

Do you agree with that statement?

A. Absolutely.

73 Q. Do you think it is economically bad?

A. Absolutely.

Mr. ZECHIEL. Are there any further questions?

Q. (By Commissioner COLVER.) Following the question I asked a moment ago, will you say that the sale of or the competition in lubricating oils is substantially lessened by these pump and tank arrangements, contracts and agreements?

A. Yes. I guess it is. It is bound to be, because the sale of lubricating oils, as I said before, is very profitable, and it is a great argument as to why the man will give the other fellow a pump or tank if his lubricating business warrants him in going to that expense.

Q. Yes: that is coming at it from one side. Now, coming at it from the other side, having given him under lease or contract of any sort such a tank and pump, then thereafter the one who receives the tank and pump is bound to buy his lubricating oil from the one who furnished it, and he is not a prospective customer. That, you say, you know to be the effect with respect to lubricating oils?

A. Absolutely. It has cut down competition in the lubricating business.

Commissioner COLVER. That is all.

The WITNESS. Gentlemen, I would consider it a favor if I might catch the 4.50 train to St. Louis, if you have no further need of me.

Commissioner THOMPSON. Is there anyone here to cross-examine the witness?

(No response.)

The ACTING CHAIRMAN. You can catch that train. We are much obliged to you.

(Witness excused.)

W. L. ZUST was called as a witness by and on behalf of the Federal Trade Commission, and being first duly sworn, testified as follows:

Direct examination:

Q. (By Mr. ZECHIEL.) Give your full name.

A. W. L. Zust.

Q. With what company are you connected, Mr. Zust?

A. Interstate Oil Company, La Crosse, Wisconsin.

Q. What is your position with that company?

A. Manager.

Q. For how long had you been connected with that company?

A. Since its organization, five years ago.

Q. What was your business prior to that time?

A. I was connected with the Hawk Eye Oil Company of Waterloo.

Q. For how long had you been connected with that company?

A. Four years.

Q. What was your business with that company?

A. Chief clerk.

Q. What were your duties as chief clerk?

A. I had charge of the office work and part of the purchasing.

Q. What are your duties as manager of the present company?

A. General manager of the business, purchasing and general manager of sales.

Q. Does that include experience with the selling of gasolene?

A. Yes, sir.

Q. In the sale of it does your company handle pumps and tanks?

A. Yes, sir.

Q. What is your business practice in that respect?
A. We would purchase and sell them.
Q. Where do you buy your pumps?
A. Mostly from the Milwaukee Tank Works.
Q. At Milwaukee, Wisconsin?
A. Yes, sir.
Q. Do you buy any pumps from any other concern?
A. I have bought some from the Western Oil Pump and Tank Company of St. Louis, sometime ago, but not recently.
Q. Do you buy these pumps in carload lots?
A. No, sir.
Q. Individually?
A. Yes, sir.
Q. When you buy a pump from any one of these companies you buy them from some particular customer, do you?
A. Generally so.
Q. You have them shipped from the factory to this customer?
75 A. Sometimes the sale happens to be where you have a station, and we have it shipped to us and make delivery.
Q. Sometimes you have it shipped direct to a customer?
A. At a point where we have no station they ship direct to the customer.
Q. In your gasolene business where do you get your gasolene supply?
A. Mostly Oklahoma.
Q. You have it shipped into your State?
A. Yes, sir.
Q. Who are your competitors in your territory?
A. The Standard Oil Company of Indiana and the Nash Refining Company.
Q. Are they all the competitors you have?
A. At La Crosse; we have the Havoline at one station. Portage and Winona, the oil company of Winona.
Q. Does the Sinclair Company sell in your community?
A. They do part of it. They have a station at Minneapolis and we come in competition with them up close to Minneapolis.
Q. How about the Iowa Oil Company?
A. The Iowa Oil Company has a station at Prairie du Chein. We make Prairie du Chein and towns south of there.
Q. Do you sell oil down in Illinois?
A. No, sir.
Q. (By Commissioner THOMPSON.) Do you have the same practice as described by the previous witness of bringing the pumps and tanks in in original packages and having them broken up on the premises where they are to be installed?
A. Partly so; yes, sir.
Q. In what way do you differ with that practice?
A. In fact, I guess it is always that way. We deliver it in the original crate even though we ship it in to ourselves.

Mr. ZECHIEL. I think he testified that he does not lease and loan under contracts. Am I correct about that? I will ask him.

Q. (By Mr. ZECHIEL.) Do you lease or loan oil tanks and pumps under contracts whereby you require your lessee to use only your own products and pay only a nominal consideration for the pumps and tanks?

A. No, sir.

Q. What is your method of conducting business?

A. The tank proper?

Q. Pump and tank?

A. We purchase the tanks and sell them direct to the customers.

Q. You do not lease or loan any of them?

A. We do not lease or loan any of them; no, sir.

Q. Do you sell them for reasonable compensation?

A. Reasonable profit; yes, sir.

Q. In your competition with the oil companies who do lease and loan these oil tanks and pumps have you ever had any experience as to losing customers because of your competitors offering to put in oil tanks and equipment?

A. Yes, sir.

Q. Describe your experience in that respect.

A. A year ago or some such a matter the Standard Oil Company of Indiana allowed their customers to have these tanks. They were leased or given away; I do not know just exactly what the arrangement was.

Q. You say you do not know exactly what the arrangement was. You do know that they leased these pumps for a nominal consideration?

A. I do not know whether they got anything or not. I doubt whether they got anything.

Q. Go ahead. Excuse me.

A. Certain customers would ask me if I would put in a tank if they handled my gas. I told them no, we could not afford to. The Standard put in a tank and they got the business.

Q. (By Commissioner THOMPSON.) Could you give a specific instance?

A. Yes, sir.

Q. Please give one.

A. Swartz & Groff, La Crosse, Wisconsin.

Q. Any other?

A. That is the only one I can say definitely where they made that arrangement, but there are others that I think have made similar arrangements.

Q. (By Mr. ZECHIEL.) Do you recall any customers that you lost because of that?

A. The customer that I mentioned, when they discontinued it.

Q. When you say "discontinued," what do you mean?

A. They discontinued this practice of loaning.

77 Q. Have you had any other experience of that kind wi any competitor of yours?

A. There is another party that handled gasolene under the sa arrangement, Mr. Wheeler, of La Crosse.

After that practice was discontinued he put in another pum Now he is handling both ours and theirs.

Q. (By Commissioner COLVER.) Did you try to sell lubricati oil to these two concerns?

A. They did not handle it. One is a confectionery store a the other is a grocery store.

Q. With respect to lubricating oil, did you ever sell any lubric ing oil to any distributor of lubricating oils who had a pump tank leased or loaned to it by some other distributor of oil gasolene?

A. I do not know of any customers that had leased tanks a handled lubricating oils. They generally have had them out some suburb or outskirts of the city in the hands of some little co fectioner or little grocer.

Q. Do you sell lubricating oils?

A. Yes, sir.

Q. (By Mr. ZECHIEL.) Have you had any other experiences b sides those you have enumerated, of that kind?

A. No, not that I recollect.

Q. Do you know of any other similar experiences of anyone el along that line, within your own knowledge?

A. No, sir; I have not talked the matter over with anybody.

Q. Over how wide a territory do you actually do business?

A. About two-thirds of the State of Wisconsin and the south border of Minnesota.

Q. Do I understand you to testify that if any other companies any other cases similar to yours had happened you would n necessarily know that, if they had taken any of your other cu tomers away?

A. I would not know it, outside of the city of La Crosse or ou side of the stations where we have tank wagon distribution.

Q. You say you would not know?

A. I would not know.

Q. (By Commissioner THOMPSON.) I want to read from the af davit of Seth C. Drake, which has been offered here to be filed i Doocket No. 85, Federal Trade Commission versus Standard O Company of Indiana. I read as follows:

78 "Affiant further says that he has been connected with th sales department of respondent for many years last past, an was so connected with it when the practice of loaning and leasin pumps and tanks to customers was inaugurated, and the said pra tice of leasing or loaning pumps and tanks, for a nominal consider tion, or free of charge, was inaugurated by the competitors of th

spondent, and respondent thereafter adopted such practice merely s a matter of self defense to meet, in good faith, the competition so tendered it by its competitors; that such practice has been and s contrary to the judgment of the sales managers of respondent nd is in their judgment bad merchandising."

Would you say that this method of contracting by way of lease r otherwise for a nominal consideration of a pump and tank is ad merchandising, when bound up with the agreement that they hould not use the oil or gasoline of another competitor?

A. Only under one condition could I see whereby it would be stified?

Q. What is that?

A. That is a small company has competitors that have service sta-ons. They cannot afford to put in a service station and they might fford to put in one of these pumps in the hands of one of the dealers r make them act as their agent or under some similar arrangement of hat kind.

Q. That would have the effect, would it not, of cutting off a com-etitor from getting his oil except from the person who was dis-ributing?

A. It would depend upon the conditions under which the arrange-ent was made, whether it would be an exclusive arrangement or low a fellow to handle both.

Q. Is there any situation that you know of, or any case where, aving given a pump or tank for a nominal consideration permission given to handle a competitor's oil?

A. From the same pump?

Q. Yes.

A. No.

Q. As a matter of fact, it does cut down competition in that respect, es it not, where they give a pump and tank for a nominal consid-ration, the company not permitting anybody else to put their oil hrough that tank and pump?

A. Certainly.

Q. (By Commissioner COLVER). And quite irrespective of put-ting gasolene through that pump, the installation of the pump under those circumstances has an influence on the sale of the ubricating oil?

A. Yes, sir.

Q. And would tend to limit the competition or destroy it in the ubricating oil, would it?

A. As I understand the question, if there is an arrangement made hereby you lease a tank or pump to a customer, he naturally buys ubricating oil from the party who makes that arrangement.

Q. (By Mr. ZECHIEL.) Then your answer would be yes to Com-issioner Colver's question?

A. I did not exactly understand the question, and I thought I ould put it that way.

Cross-examination:

Q. (By Mr. MacEwen.) Assuming that there were a number o companies in the territory instead of simply the proposition o somebody else putting in one tank and one pump; it would not b a practical thing for ten competitors to put in a tank to the sam garage or the same dealer, would it?

A. Hardly possible. They would not have the room to take car of it.

Mr. MacEwen. That is all.

Q. (By Commissioner Colver.) The alternative, then, would b for the garage man to furnish his own pump and tank, would it?

A. Yes, sir.

Q. (By Mr. MacEwen.) Would not the alternative be to eliminat competition rather than to furnish his own tank and pump, provide these tanks and pumps are furnished free of charge or at a nomina rental?

A. Yes.

Redirect examination:

Q. (By Mr. Zechiel.) In your connection with this company including other experience you have had with oil companies, hav you had occasion to visit the various garages in your territory?

A. Yes, sir.

Q. What has been your experience as to whether or not th
80 garages or other distributors of refined oil and gasoline hav more than one such an equipment, oil tank and pump through which they sell gasoline or refined oil?

A. They have more than one?

Q. Yes, sir. Have they or have they not?

A. It is very seldom they have more than one.

Q. What is the fact about that? Do the various retailers of gas line handle at the same time the oil products of more than one oi company?

A. They most all handle more than one grade, especially in th lubricating line.

Q. I do not mean the lubricating line; I mean gasoline.

A. Very seldom they handle more than one grade of gasolene.

Q. I want to ask you still further: Over how much of your geo graphical territory does this experience to which you have just testified extend with respect to the buying and selling of gasolen and the use of oil tanks and pumps by garage men?

A. Mainly Wisconsin. We have no stations in Minnesota at all.

Q. Do you have any personal knowledge with respect to any geo graphical territory other than that in Wisconsin?

A. No, sir.

Q. Let me ask you in that connection, again, if the effect of thes tying contracts .. the lease and loan of pumps tend to stifle and suppress competition in the sale of gasolene and lubricants, or would the tendency be to cause the garage people and other vendees t

have two or three sets of pumps from different oil companies? What would be the effect, in your experience?

A. If they had two or three?

Q. No: in your experience, what is the effect of these tying contracts? We will use the term in dollars and cents. Does it cause a garage man to deal only in one kind of lubricating oil and gasolene from one wholesaler, or does it cause the garage man to put in several equipments to handle its products?

A. There are very few garages that will handle more than one kind of gasolene.

Q. Your answer, then, is that it eliminates competition?

A. In the gasolene part of it: not so much in the lubricating part of it. They handle various kinds of lubricating oils.

Q. But so far as gasolene is concerned the tendency is to eliminate competition?

A. Yes, sir.

(Witness excused.)

H. E. WORMHOUDT was called as a witness by and on behalf of the Federal Trade Commission, and being first duly sworn, testified as follows:

Direct examination:

Q. (By Mr. ZECHIEL.) Where is your place of business?

A. Des Moines, Iowa.

Q. With what company are you connected?

A. Manhattan Oil Company.

Q. How long have you been connected with the Manhattan Oil Company?

A. A little over four years.

Q. What was your experience prior to that time?

A. I was not in the oil business. I was general agent for the Burlington Railroad at Des Moines prior to that time.

Q. What is the business of your company?

A. The making of gasolene and kerosene and lubricating oils.

Q. What is the general extent, geographically, of the territory covered by your concern?

A. The State of Iowa, about two tiers of counties in Missouri, the two northern tiers.

Q. Do you ship your gasolene products back and forth between your stations?

A. We do in drums. We have no tank station, so-called, in Missouri. We ship in drums to Missouri.

Q. You have your gasolene products shipped in to you from other States than those two States?

A. Yes, sir; we have gotten some from Oklahoma and Kansas.

Q. Do you also handle the pumps and tanks in which this gasolene is sold?

A. We do.

Q. Where do you get your pumps and tanks?

A. Milwaukee Tank Works, principally.

Q. How do you have those pumps shipped in—in carload lo
or individual orders?

82 A. Lots of approximately twenty-four to thirty, less tha
carload lots.

Q. When you have your pumps shipped in do you have the
shipped to a particular customer, or are they consigned to yourself

A. Principally to ourselves. Sometimes direct from the facto
to the customer.

Q. And when they are sent to the customer they are delivered
that party's place of business?

A. Yes, sir. When they come direct from the factory they deliv
at the railroad station. He installs them himself and hauls the
from the railroad station to his place of business.

Q. You never install them?

A. No, sir: we never install them.

Q. When you have them consigned to yourself what is the pr
cedure?

A. They come into our place of business at Des Moines and
haul from the railroad station to our place. We can deliver the
to the railroad station for reshipment. That is all we do wi
them.

Q. I suppose you install them in the city of Des Moines?

A. We would not install them at all in the city of Des Moi
—never have: I cannot say what we would do.

Q. Then I understand you to say that if you have a custo
in the city of Des Moines you have it shipped directly to him?

A. We would deliver in such case from our place of busin
I imagine we would. We have never had a case of that kind.

Q. (By Commissioner THOMPSON.) When you keep it in stor
you keep it in the original package: you do not break it up.
you?

A. We do not break up the original package at all.

Q. (By the ACTING CHAIRMAN.) These packages come in th
parts—the cylinder, crated separately: then the breakable pa
crated separately, and then the tank. Is not that the ordinary wa

A. Generally in three parts: yes, sir.

Q. (By Mr. ZECHIEL.) In your connection with your concern
what are your duties?

A. Manager in the general supervision of the business, buyi
and selling.

Q. In that connection do you travel about over your te
ritory?

83 A. I do to a limited extent: yes, sir.

Q. To what extent do you come in contact with garages a
other individuals dealing in gasolene?

A. Just as I make trips out of the state to points where they h
stations. I generally drop in and see those fellows.

Q. Have you had any other actual personal experience with respect to garages about over the country than those in your actual field or territory in which you sell?

A. I have not.

Q. In that territory you have been over most of the area in a personal way?

A. Yes, sir. Wherever we are represented I have been over the ground in those towns.

Q. Do you ever lease or loan pumps and tanks to customers?

A. We have one case where we have made a loan of a tank.

Q. In that case what were the terms under which the loan was made?

A. Only a verbal agreement.

Q. What was the effect of the agreement?

A. That we would furnish without charge this pump, and that so long as the pump was used our goods should be used, should be purchased by this man to whom we had loaned the pump. But I might say that we were jockeyed into that proposition. We did not do that wilfully.

Q. What do you mean by that?

A. I mean that competitors had made an offer to do that or to take from us that customer's business.

Q. Who was the competitor you speak of?

A. The Standard Oil Company.

Q. That is the Indiana corporation?

A. Yes, sir.

Q. What are the detailed facts in that case?

A. I have been trying to find out what the facts are.

Q. (By Commissioner THOMPSON.) You have not yet found out?

A. I did not.

Q. (By Mr. ZECHIEL.) It is a fact, however, that you were attempting to sell your pump equipment to a customer of yours; you had been negotiating for the sale, had you?

A. Not in that case; no, sir.

Q. I am trying to learn how you came finally to lease or loan the equipment. What were the——

A. If I may explain the case, it was this: We had the man's business. He had an old worn-out pump. He said, "I am able to get a pump free of charge provided I give my business to this other concern." It was rather a good account. We had sold the man lubricating oil in large quantities. After considering it, we came to the conclusion that in order to hold what we had we would do as much as he represented the other man had offered to do. Since that time I am not so sure that the case was represented to me correctly.

That is the only case we have, however, except we have fallen heir to a couple of stations we have taken over from other companies. They were of long standing and we have not been able to break them as yet.

Q. What do you mean by "breaking them up as yet?"

A. It is our policy not to do that thing.

Q. What do you mean—lease or loan oil or gasolene pumps and tanks for a nominal consideration under tying contracts?

A. Yes, sir.

Q. You mean you have inherited a few oil tanks and pumps under such a contract?

A. We have inherited two at Racine, Iowa, where we buy stuff from the Consumer's Oil Company. They were in effect at the time we took this station over. They are still in effect. We have the place about three months. We have made several efforts to discontinue that arrangement but have never been successful.

Q. (By the ACTING CHAIRMAN.) I am interested in your statement that you would like to break up these two outstanding contracts that you have succeeded to. Why do you want to break them up?

A. It is not a proper arrangement, not a good arrangment from a business standpoint, Mr. Murdock.

Q. You do not regard it as good merchandising?

A. I do not.

Q. Why not?

A. If it is good merchandising there is no limit to which it can be carried. You might just as well furnish a man a truck and furnish him the other equipment in his garage. It might very easily lead to that.

Q. I wish you would explain that. I do not follow you on
85 the truck proposition. What is the difference between a pump with a tank attached to it and a tin can containing gasolene?

A. I do not know that I get your thought, Mr. Murdock.

Q. If you sell a quantity of gasolene to a man, in a container, you may sell the container to him with the gasolene and it would be good merchandising?

A. Yes, sir; so long as we get a profit on the container it would be; yes, sir.

Q. If you give him a pump and tell him that he shall sell only your gasolene through that pump, and then you charge a price for the gasolene that nets you a return for the value you put into the pump, the money you spent to get the pump to give to him, why is it poor merchandising?

A. Because it never works out that way. You cannot, under the present conditions, charge sufficient for your gasolene to cover the offset. You cannot get more for your product than your competitor is getting; and the margin that you enjoy at the present time does not justify contributing this pump.

Q. Does not that depend somewhat on what the gasolene costs in the first instance?

A. It does; yes, sir. I am speaking of present conditions now. I say it is not warranted under present costs that we have to pay for our stuff, freight and overhead.

Q. If you had a competitor who could get his gasolene much cheaper than you can buy yours, would it not be profitable and a proper merchandising proposition for him to sell the pump, not give it away?

A. It might be.

Q. (By Commissioner THOMPSON.) You would not consider it fair, though, would you?

A. I would not consider it fair. I would simply hold that to be an advantage that the other fellow's capital gave him. My ability to sell merchandise might be as great as his, but I would not be able, under that proposition, to do business on a parity with him.

Q. (By the ACTING CHAIRMAN.) Then the deduction that I draw from your position in the matter is that you think it is unfair for one man to occupy a position, even by virtue of capital, whereby he could force another member of the community to buy at a loss. That is about your position?

A. That is my view; yes, sir.

Q. (By Mr. ZECHIEL.) To about how many stations do you furnish oil and gasolene?

A. We have twenty-one in Iowa.

Q. Over your whole territory.

A. In Nebraska—we operate as a separate proposition—we have about twenty.

Q. You have some forty stations, then?

A. Yes, sir.

Q. Who are your competitors in the two territories?

A. The Standard Oil Company——

Q. The Standard Oil Company of Indiana?

A. Yes, sir. The Consumer's Refining Company, S. L. Collins Oil Company, Cedar Rapids Oil Company, Transcontinental Oil Company.

Q. Is the Sinclair Oil Company in your territory?

A. Not directly. We do not have the Sinclair at any of our stations, although they are generally in the State of Iowa.

Q. How about the Iowa Oil Company?

A. We never come in contact with them.

Q. Do you know, as a matter of fact, their geographical distribution?

A. I do not.

Q. You do not know that there are any in this territory?

A. No; I know nothing of the Iowa Oil Company.

Q. Have you ever had any of your competitors interfere with your general trade through the use of these leases and loans other than the one you described a while ago, the experience with the Standard Oil Company?

A. Yes, sir. We have had a number of cases in addition to that.

Q. Describe those in detail, as you recall them.

A. Right now, that is, less than a week ago, we lost a customer's business in Iowa. The man's name was Zimmerman, at Peru, where

the Standard Oil Company of Indiana agreed to deliver to him a tank and pump. The man ceased dealing with us because of this promise. The delivery of the equipment has not been made, but he holds a contract to that effect.

Q. Do you know through representations directly in your conversation and dealing whether they offered to install that tank and pump at a nominal consideration or not?

A. I cannot speak from personal knowledge, only as my agent reports the matter to me.

87 Q. (By Commissioner THOMPSON.) How long ago did the Standard make that offer?

A. About two weeks ago. I learned about it a week ago.

Q. Do you know the name of the agent?

A. No, sir.

Q. Can you find it out?

A. Yes, sir.

Q. Will you find out and let us know?

A. I will.

Q. I would like to know at the earliest possible date.

A. Yes, sir; I can give the information.

Q. (By the ACTING CHAIRMAN.) So we may be sure that the record carries it, at what point was that in Iowa?

A. Peru.

Q. Zimmerman, at Peru?

A. Yes, sir.

Q. (By Commissioner THOMPSON.) Will you give us the name of your agent who told you this?

A. H. D. Shoenberger.

Q. Is he at Peru?

A. He is at Winterset. Peru is an outlying point that he covers from Winterset with his truck service.

Q. (By Mr. ZECHIEL.) What other instance can you relate?

A. A case in the city of Des Moines where we enjoyed the business of the Cass Meat and Sausage Company who operated quite a number of trucks. We lost it, due to the fact that the Transcontinental Oil Company, which was then known as the Gasolene Supply Company, installed a pump without any charge whatsoever.

Commissioner THOMPSON. Is that one of the respondents in this matter?

Mr. ZECHIEL. It is not.

Mr. DOW. That company has taken over the business of the Riverside and Eastern and Riverside and Western Oil Company.

Q. (By the ACTING CHAIRMAN.) How recent was this transaction?

A. About sixty days ago.

Q. (By Mr. ZECHIEL.) What other instances can you relate?

A. There have been a great many. I can not call the names of the garages. One that I recall, however—I can not think of the name; I know the location of the place at 8th and Mulberry in Des Moines—the Cedar Rapids Oil Company furnished the equipment.

Q. You have testified that there were numerous instances of this kind. When you say numerous instances of this kind, what, in general, are you referring to?

A. We come in contact with that thing through our agents.

Q. Just to what are you referring when you say "that thing"?

A. The loaning of pumps and tanks.

Q. Under tying contracts without reasonable consideration?

A. Yes, sir.

Q. What is your statement in that respect, your general experience in that respect?

A. We come in contact with it very frequently through our agents where we lose business. Of course, they being commission men, are as much interested in retaining business as I am, so that our attention is very readily called to such matters that have come up quite a number of times in the past six or eight months.

Q. Is it your experience that you have lost considerable business on account of the practice you have just referred to?

A. We have.

Q. From your experience in and about over that territory what is the fact as to whether or not the garages generally have more than one equipment for handling refined oil and gasolene?

A. I have never seen a garage that had over one equipment.

Q. Also your experience is that they buy gasolene from one company only, so long as they are operating under a lease similar to that which you have described before?

A. Yes, sir.

Q. (By the ACTING CHAIRMAN.) Before cross examination, what have you to say on the proposition that there is a larger margin on lubricants than there is on gasolene, and that the sale of the lubricants carries the gasolene station? What has been your experience along that line?

A. The margin is considerably wider in lubricating oils, and where there is such an agreement and they loan such a pump it generally follows that the dealer that is favored by the loan will buy his lubricating oils from the party loaning him the pump.

Q. Then it is quite possible that the motive for giving or leasing the pump at a nominal figure would be not so much for the profit made out of the sale of a single company's gasolene as it would be that it pushed the sale of that company's lubricating oils?

A. I would say the motive would be equally as much to promote the sale of lubricating oil as the sale of gasolene.

Q. The lubricating oil is not handled through the pump?

A. It is handled through a different type of pump—small pumps—generally.

Q. Is it the practice in some cases to give that pump away or to lease it?

A. I know of no cases of that kind. That equipment is generally owned by the garage man. It is not very expensive: he can afford to buy that and own it outright.

The ACTING CHAIRMAN. Is there cross-examination?

Mr. MACEWEN. Yes, sir.

Cross-examination:

Q. (By Mr. MACEWEN.) Does your company operate in Nebraska?

A. Yes, sir.

Q. In Nebraska you have companies that you come in contact with other than the Standard of Indiana and the companies that you have mentioned?

A. I think that is true, although I do not manage the Nebraska company, Mr. MacEwen.

Q. You are familiar with the fact that the Indiana company is a different company from the Standard Oil Company in Nebraska?

A. Yes, sir.

(Witness excused.)

W. E. MACEWEN was called as a witness by and on behalf of the Federal Trade Commission, and, being first duly sworn, testified as follows:

Direct examination:

Q. (By Mr. ZECHIEL.) Give your name, please.

A. W. E. MacEwen.

Q. Where is your place of business?

90 A. Our general offices are at Cleveland, Ohio.

Q. With what concern are you connected?

A. Secretary and general manager of the Nash Refining Company.

Q. How long have you been connected with that company?

A. About nineteen years.

Q. In the same capacity?

A. No, sir.

Q. What were the various capacities?

A. I have been in the traffic department of the company, and also acted as counsel in matters, and was made secretary the first of this year.

Q. What is the general geographic territory over which your company does business?

A. We operate in Ohio, Indiana, Illinois, Wisconsin, Minnesota, North Dakota, South Dakota, Nebraska, Kansas, Missouri, Oklahoma, Arkansas, Mississippi, and Kentucky.

Q. (By the ACTING CHAIRMAN.) What is your company?

A. Our company is a corporation organized under the laws of the State of Ohio. We are engaged in producing, refining, and marketing petroleum and its products.

Q. (By Mr. ZECHIEL.) During your experience in the oil and gasolene business have you had occasion to come in contact with the distributing centers? By that I mean the garages and various other retailers of gasolene?

A. Yes, sir.

Q. To what extent have you had such an acquaintance?

A. I have been pretty close to the operation of our business in the traffic department involving transportation, and I necessarily became familiar with the marketing conditions and practically all phases of the business.

Q. Have you been about over your territory generally visiting numerous garages?

A. Yes, sir.

Q. Who are your competitors in your various territories?

A. Well, it really includes all the leading refiners and shippers of that particular product.

Q. And in connection with that, the Sinclair Refining Company?

A. Yes, sir.

Q. The Richardson Lubricating Company?

A. Yes, sir.

Q. And the Iowa Oil Company?

A. Yes, sir.

Q. The C. L. Smith & Gasolene Company?

A. Well, from the testimony to-day I would assume we do.

Q. The Oklahoma Producing & Refining Corporation of America?

A. Yes, sir.

Q. (By the ACTING CHAIRMAN.) Of course the Standard of Indiana is a competitor?

A. Yes, sir; as well as the Standard of Nebraska, particularly the Magnolia and other Standard Oil corporations.

Q. (By Mr. ZECHIEL.) Do you come in contact with the Texas Oil Company?

A. Yes, sir.

Q. In what field?

A. We come in contact with them more in the south than anywhere else, and probably in Ohio in recent years to some extent.

Q. Do they sell in competition with you in Illinois?

A. Yes, sir.

Q. In any of the other States of the western central group?

Q. (By the ACTING CHAIRMAN.) What is the competition in Kentucky?

A. The Standard Oil Company of Kentucky is our principal competitor in Kentucky. Then there are a great many jobbers that operate out of Louisville—the Stoll Oil Company, and I do not know whether the Sinclair is in Kentucky or not.

Q. What about Arkansas?

A. We have a distributing plant at Little Rock. We come in competition there with the Standard Oil Company of Louisiana and with a number of jobbers; also the Texas Company and the Gulf Company in Arkansas.

Q. Do any of those Oklahoma companies come East? They must, do they not?

A. Yes, sir; a great many of them do.

Q. (By Mr. ZECHIEL.) Do you deal also in pumps and tanks in connection with your gasolene business?

A. It has not been our policy to do that. We probably have, exclusive of the State of Nebraska, some ten or twelve pump arrangements that were put in a great many years ago. I have recently found that contrary to our instructions and policy some such arrange-
92 ments were made in Nebraska. I discharged the manager two weeks ago for violating that policy.

Q. When you say "violating that policy," just what policy do you refer to?

A. The giving away of pumps and tanks in order to secure the business from garages or dealers.

Q. Do I understand you to testify that you do not sell pumps or tanks for a reasonable consideration?

A. We do not.

Q. You do not deal in pumps and tanks at all, then, except in the incidental way?

A. That is all, excepting one case that I handled personally very recently in which I drew a contract myself stipulating that it would be void in case the Federal Trade Commission ruled against the practice. We did that in order to hold a customer in Jackson, Mississippi who had built a new garage. That would cover the extent of our pump operations.

Q. (By the ACTING CHAIRMAN.) Mr. MacEwen, can you give us in narrative style just how that case came up?

A. Yes, sir. We had been selling the dealer in Jackson. I can not recall his name, now; we have so many of them, but I would be very glad to secure it. This dealer was putting up a garage in the center of town. Another oil company had offered to furnish the equipment free of charge, and we were told that if we did not do it they would put in the other equipment. In order to protect our interests in that particular case I drew a contract to put a pump in. It has not been furnished up to this time.

Q. (By Commissioner THOMPSON.) What is the name of the other company?

A. I cannot give you that, now, either. There are so many of these companies. I would be glad to secure it for you.

Q. (By the ACTING CHAIRMAN.) What do you estimate that that pump would cost you?

A. The pump and tank combined would probably cost us around four hundred dollars.

Q. Apart from the competitive necessity that you are under in making such a contract, did you consider it a good business proposition?

A. I certainly did not. I think it is a pernicious practice.

Q. Wherein is it pernicious?

A. It is pernicious in this way, that it tends to or can tend in time, as the automobile industry grows and as the garage becomes a substantial business—it can tend to put the control of the garage business in the hands of a few large companies that may have capital enough to finance that kind of competition—giving away of something to get business, thereby eliminating competition so far as the other companies are concerned that can not afford to finance an extensive national campaign of giving away four or five hundred dollars every time they get a contract.

I have on my desk to-day a request from a garage to sell our lubricating oils if we will furnish a pump. It is not good business practice to give anything away in order to secure business or to stifle competition in my opinion.

Q. Wherein, as a business man, do you differentiate between the gift of a pump for the sale of a commodity like gasolene, and a pure quantity discount?

A. It seems to me there is quite a considerable difference there. A quantity discount might be justified by the elimination of considerable overhead or expense that would be involved in delivering, we will say, in five or ten gallon lots. Probably a quantity discount would be a reasonable practice, whereas the giving away of four or five hundred dollars worth of material would not be a reasonable practice. If the quantity discount were given, the chances are it would be a reasonable one. I do not know very many other reasonable ones. Everybody could perhaps do that and save it in their overhead; whereas, you could not afford to invest four or five hundred dollars every time you went out to get a piece of business, particularly at the margin you have on gasolene.

Q. Does it ever occur to you that the situation now differs materially from the old times when trade was small, units were small? In your boyhood it was quite common for a merchant to give something "to boot." It was in the shape of a gratuity. Giving a pump is something more, as I see it from what I have heard to-day, than giving something "to boot," is it not?

A. Yes, sir; because you surround that with an ironclad agreement to compel that customer to buy your goods during the time he has that pump in there, whether the quality of the gas deteriorates or not. He is under that obligation to use your goods exclusively. You immediately affect the entire petroleum industry under that kind of contract.

Q. I asked that question because you say this practice, in your opinion, is pernicious——

A. I think it is pernicious because of its tying feature and because of the economic feature. I can not conceive of any logical reason

why the oil industry should furnish the equipment in order to sell the goods, any more than a cigar company would furnish fixtures to a man who bought a cigar store. I think it is a bad proposition. I think it tends to concentrate business among a chosen few. That would not be bad if it did not tend to eliminate competition. But these things all tend to eliminate competition and can be carried to a much greater extent. As I say, we can go in and give trucks or more elaborate equipment, depending on the capital we have. My company can afford to go into this pump proposition and give pumps away if it is going to be permitted.

Q. Can you add anything to what has been said here to-day about the fact that the sale of the gasolene with the gift of the pump or the lease of the pump at a nominal figure is used as a device for the sale of lubricating oils?

A. I think that is true to a considerable extent. The object in giving the pump is to find a market for the gasolene, a method by which to distribute the gasolene. Of course the contract carries with it a clause that they shall use all of their petroleum products in return for giving that pump and tank. I do not believe you can give a pump and tank and make any money out of gasolene.

Q. (By Mr. ZECHIEL.) What has been your experience out through your territory as to the use of more than one pump or tank equipment by various garages or retailers generally?

A. There are some cases of that kind, but they are very limited. Where I have found those cases it has been due to another reciprocal proposition. For instance, a garage might be the agent for a truck. They might have one of our pumps in there, and some other large company is buying great many trucks in there, and they will put one of their truck customers there. The is the only case I know of where there are more than one company's tank and pump put in a garage.

Q. So that in the ordinary course of business among the ordinary garage people and retailers of gasolene, the universal practice is to have just one pump outfit?

A. Yes, sir.

95 Q. And that particular garage or retailer sells just the gasolene product of one company?

A. Yes sir. The difficulty that our company is in right now notwithstanding the Commission's order, the practice is still being continued by other companies. For instance, the Collins Oil Company in Iowa are putting out pumps: and my company is in competition with them.

Q. (By the ACTING CHAIRMAN.) Who are the Collins Oil Company?

A. Jobbers in the State of Iowa.

Q. At Des Moines?

A. Yes, sir. There are other companies that are putting them in, according to the reports we get. We not only lose business but it prohibits us from getting new business.

Q. (By Mr. BURDEAU.) I do not believe that question has been covered—the extent to which you had suffered.

A. It is very extensive so far as the dealers' business is concerned. Our dealers' business, excepting in certain territories, is very limited, because we have refused to engage in those practices. Perhaps the business we have lost by reason of it is not nearly as great as the business we have failed to get by reason of refusing to indulge in that practice in our market.

Q. Have you found numerous instances of that kind that you can enumerate?

A. Yes, sir; I can furnish you in a short time, I think, with extensive statistics that in the State of Nebraska where the manager has given pumps away contrary to our instructions we have an extensive dealers' business, but where we have not been giving them away we have not.

Q. (By Mr. ZECHIEL.) Is it your opinion that your increase is due directly to the use of these contracts whereby you give or lease pumps?

A. To a considerable extent. I know in the city of Omaha that is absolutely true.

Q. It is your opinion that you have lost a large volume of business because of the use by your competitors of these contracts by which they lease one of the pumps for a nominal consideration?

A. I would put it in this way, that we have failed to secure a large volume of business that we could have secured otherwise.

Q. Is it a fact or not that you have lost a large amount of business.

A. Oh, yes; we have lost business, too.

Commissioner THOMPSON. Is there any cross-examination?

(No response.)

Q. (By the ACTING CHAIRMAN.) Before you go I would like to ask you this. It is not just pertinent to this question, but it will refer into it finally.

What about the new filling station? How long have we had it?

A. The filling station's most phenominal growth has probably been within the last three or four years. It probably started ten years ago, but it has grown. At that time it was an uncertain proposition in the oil industry. We did not know whether it was going to be a permanent fixture. To-day it is. It has a permanent growth.

Q. Do you consider it a profitable arm of the industry, considering the high priced real estate it occupies, because it must be in a more or less favorable location? I was just wondering whether ordinarily it was a profitable thing.

A. I have given a great deal of study to the question, and I would say that I do not consider it a profitable investment. You have exceptions to that. We have filling stations that are very profitable. Some I have in mind; but where you pay an expensive rate for property, I do not think you are making any money in

your investment in that kind of stations. It brings to my mi
that it has been suggested that the use of these pumps is necessar
in order to meet that kind of competition; but the garage man wou
still sell gasolene if he had to buy his own equipment.

Q. So, upon the whole, so far as its development is concerne
you do not look upon the general run of filling stations as an econom
cal addition to the service?

A. Oh, I think it is an economic addition. I think, probably—

Q. I mean, an addition to the service which makes for the econo
ical handling of the product?

A. I think probably it will be in time, because the more they
in the more the home storage will be abandoned. They build
the gallonage of the filling station, and it will be developed if it
not now. I do not know about other companies, but I am sure
will be an economical way of handling gasolene. It fills up the g
lonage as your trucks increase and as your motor cars increase a
as they buy their lubricating oils more and more at the filling s
tions.

97 Q. (By Commissioner THOMPSON.) Some one has said th
this giving away of pumps, and so forth, by these compani
puts a tremendous leverage in the hands of the big concerns. W
not the filling stations put an even greater leverage in the hands
the big concerns?

A. I think not. With fair competition and the elimination of th
kind of practices the independent refiner, with proper manageme
does not have any difficulty with, we will say, the Standard Oil Co
pany. My own opinion is that the Standard Oil Company is t
cleanest competition that we have in these territories.

Q. The keenest?

A. The cleanest. I say that advisedly, because I have fought w
them for a great many years.

Q. (By the ACTING CHAIRMAN.) Probably the keenest and t
cleanest?

A. No; I do not think it is the keenest, as the people in our ter
tories that are engaged in these practices such as we are talking ab
here are the keenest.

Q. (By Mr. ZECHIEL.) The Standard Oil Company is engaged
these practices everywhere, is it not?

A. No; they are not in the State of Nebraska. I do not think th
have any such arrangement. I am familiar with it in that St
I think every other oil company but the Standard have—and I a
not holding a brief for the Standard, either.

The ACTING CHAIRMAN. Is there any cross-examination?

(No response.)

The WITNESS. May I leave just one more thought with the comm
sion? On the so-called referendum that there has been a great d
of criticism of in the petroleum industry, of all the oil companies
the United States—the refiners I am talking about now—there
comparatively few that market their petroleum products direct to

nsumers, and therefore are not directly interested in this particular
oblem; so that a re*f*rendum of the petroleum industry, particularly
it is voted upon by people who are not engaged in marketing to the
nsumer, would not have very much weight on whether the question
proper or not.

(Witness excused.)

Mr. ZECHIEL. Here is an agreed statement, so far as we have gone,
ith the Sinclair Company.

Commissioner THOMPSON. Does the testimony which we have heard
conclude the testimony of the commission?

Mr. ZECHIEL. No. It is all the witnesses that there are here
to-day. Two or three of the witnesses reported that they were
and they were not all subpoen'ed for to-day. We subpoen'ed some
day and some for to-morrow and, I think, others not until Monday.

The ACTING CHAIRMAN. Here is the agreed statement of fact with
e Sinclair Company, but you say it is not complete?

Mr. ZECHIEL. The agreed statement is complete. It covers all the
idence except the economic situation.

Commissioner THOMPSON. Had we better not hear the Sinclair
ople on the economic situation?

Mr. BURDETT. Vary the procedure and let them put in what they
ve to say by way of argument.

Mr. ZECHIEL. I do not know of any reason why we should not hear
em to-day.

Commissioner THOMPSON. Suppose we ask the Sinclair Company
ether it cares to put in at this time any evidence on the economic
estion involved.

Mr. OSBORN. I do not know that I am prepared to say right at this
oment. It was my understanding when this stipulation was entered
to that there were two or three propositions reserved here on which
re would be testimony introduced on behalf of the commission so
r as the Sinclair case is concerned.

Mr. ZECHIEL. I do not know now, Mr. Osborn, whether you were
re at the beginning of the session?

Mr. OSBORN. No; I was not.

Mr. ZECHIEL. It was ordered by the commission that all the evi-
ce be taken for all the companies at the same time, and all the
idence that has been introduced was introduced on that theory.

Mr. OSBORN. I am sorry I did not know about that. I did not know
t you were going to reach the Sinclair case at all. If I had known
t there would have been probably some questions that I would
e liked to have asked some of these witnesses.

Mr. ZECHIEL. There is one more witness who advises me that he
res to be heard.

The ACTING CHAIRMAN. Very well.

99 JOSEPH F. KUNZ was called as a witness by and on behalf of the Federal Trade Commission, and being first duly sworn testified as follows:

Direct examination:

Q. (By Mr. ZECHIEL.) With what company are you connected?
A. Kunz Oil Company.
Q. In what capacity?
A. Secretary.
Q. How long have you been secretary of the company?
A. Fifteen years.
Q. Is that as long as you have had any connection with the company?
A. No, sir.
Q. How long have you been with the company?
A. About twenty-five years.
Q. Have you had any other experience in the oil and gasoline business except your connection with this company?
A. No, sir.
Q. Prior to the time you became secretary what was your capacity with the company?
A. Salesman of the company.
Q. In your experience with that company have you come in contact generally with the garage people and other distributors or vendees of gasolene products?
A. Yes, sir.
Q. What is the geographical territory in which your company does business?
A. Minnesota, North Dakota, South Dakota, and part of Montana.
Q. Do you do a general business over the entire portion of the States?
A. Yes, sir.
Q. Over all of Montana or part of Montana?
A. Part of Montana.
Q. Do you also deal in pumps and tanks in connection with your business?
A. No, sir.
Q. You do not sell any pumps or tanks at all?
A. No, sir; just these small sixty-gallon pumps; but they are lubricating oils.

100 Q. What is commonly known as the Bowser pump? You are acquainted with that?
A. Yes, sir.
Q. You do not handle that type pump at all?
A. No, sir.
Q. During your experience with your company have you had occasion to visit the various garages and retailers?
A. Some; not very recently.

Q. Do you do business with the garage or retail people?
A. Not very much with the garages: we do a retail business.
Q. You do a retail business yourself, you mean?
A. Yes, sir.
Q. Describe in a general way the kind of business you are engaged

A. Our line mostly is in the lubricating business, lubricating oils and grease, although we handle gasolene and kerosene. Most of our gasolene is sold to truck owners. We do not have any filling stations and we do not sell but to a few garages at this time.
Q. Have you any explanation or reason for not selling to garages?
A. Well, the reason for it mostly is on account of making arrangements for tanks and pumps, whereby other companies will furnish them the gasolene providing they will put in the outfit and use their pumps.
Q. Do you mean that the garage people with whom you do business and the other retailers with whom you do business have arrangements with various oil companies under contracts by which the oil companies lease or loan them oil tanks and pumps for a consideration that they are not to put in such pumps the gasolene of a competing company?
A. Yes, sir.
Q. You say your reason for not conducting a larger business in gasolene with these garages and other retailers is that the numerous retailers have entered into such contracts with various other oil companies?
A. Yes: that has a whole lot to do with it.
Q. Do you know the names of any of the competing oil companies?
A. In our city the Sinclair and the Standard.
Q. (By Commissioner THOMPSON.) Of Indiana?
A. Of Indiana: yes, sir.

Q. (By the ACTING CHAIRMAN.) Your city is what?
A. Minneapolis.

Q. (By Mr. ZECHIEL.) Are there any other companies generally in Minneapolis with whom you come in competition?
A. No, sir: not that I know of. I do not think so.
Mr. OSBORN. Did the witness say Minneapolis or Indianapolis?
The WITNESS. Minneapolis.
Q. (By Mr. ZECHIEL.) In your experience in connection with these garages and other retailers, what is the fact about whether or not a garage has more than one oil tank and pump equipment?
A. I do not think they have—not to my knowledge.
Q. Do you know of any case where a garage or any other retailer has more than one such equipment for selling gasolene products, refined oil and gasolene products?
A. No, sir.

Q. Dou you know whether or not these various garage people an other retailers buy and sell gasolene of more than one company?

A. No, I do not.

Q. You mean to say you do not know whether they do or not?

A. They do not sell only to one company.

Q. Have you ever lost any business because of these tying co tracts, that you know of?

A. Yes, we have.

Q. Enumerate some of those instances or all of them.

A. The names of the companies?

Q. Yes, and all about the whole situation.

A. We have lost one—the Peter Faber Company. We sold the They asked us to furnish them a pump and tank, which of course w could not afford to do, and would not do, so they bought from so other company.

Q. Do you know what company they bought from?

A. From the Standard.

Q. The Standard of Indiana?

A. Yes, sir.

Q. (By the ACTING CHAIRMAN.) How recent is that?

A. About a year ago.

Q. (By Mr. ZECHIEL.) Do you know whether or not the Standa puts this pump in under what is commonly known as the lease agr ment?

A. I am not in position to say, because I do not know. This only what the customers tell us, that they agreed to put in a pum and tank.

102 Q. It is a fact, however, that this particular customer ask you to put it in and you refused to do it?

A. Yes, sir.

Q. Have they bought any gasolene from you since the installat of the pump?

A. No, sir.

Q. (By Commissioner THOMPSON.) Did you try to sell him any

A. Yes, sir; we called on him but he never bought any more fr us since then.

Q. Did he tell you why?

A. Well, he felt that on account of using their pump and tank was not policy for him to buy his gasolene from us.

Q. (By Mr. ZECHIEL.) Did you try to sell him any lubricants?

A. Yes, sir.

Q. Did you sell him any?

A. Yes, sir.

Q. (By the ACTING CHAIRMAN.) You did?

A. Yes, sir. He buys lubricating oil from us.

Q. (By Mr. ZECHIEL.) Are there any other experiences of th kind?

A. We had another one with the East Side Auto Company which we paid for half of the tank. That is several years ago.

der to keep the customer we had to pay for half of the tank and e pump.

Q. You say in order to keep the customer. What were the repsentations?

A. The other companies were going to furnish them oil and furh a tank.

Q. Do you know what the companies were that would have furshed the oil?

A. The Standard Oil Company.

Q. That is the Standard Oil Company of Indiana?

A. Yes, sir.

Q. What other instances of that sort have you in mind?

A. There is one of the 13th Avenue Hardware Company. They t in a pump of the Sinclair Company in the same way.

Q. What were the facts about that?

A. They wanted us to put in a pump and we would not do it, and the Sinclair Company put in a pump in their place and sell them gasolene under one cent a gallon commission, one cent a llon profit.

Q. Are there any other instances that you recall?

A. No, I do not.

Q. That is the Sinclair Refining Company to which you refer?

A. Yes, sir; the Sinclair Refining Company.

Q. You say there are numerous instances similar to the three you ve enumerated?

A. I did not pay any particular attention to it. If I had known s was coming up I could have made notations of it.

Q. But it is a fact that there were numerous instances of the kind.

A. Yes, sir.

Q. (By Commissioner THOMPSON.) I want to read to you a paraaph from an affidavit of Seth C. Drake.

The ACTING CHAIRMAN. Who is Seth C. Drake?

Commissioner THOMPSON. He is one making an affidavit in supt of a motion of the Standard Oil Company of Indiana in Docket . 88.

The ACTING CHAIRMAN. What is his habitat? Where does he me from?

Commissioner THOMPSON. Chicago, Illinois. He is general sales nager for the Standard Oil Company of Indiana, a corporation. makes this statement in his affidavit which is filed in Docket No. as follows:

"Affiant further says that he has been connected with the sales artment of respondent for many years last past, and was so conted with it when the practice of loaning and leasing pumps and nks to customers was inaugurated, and said practice of leasing or ning pumps and tanks, for a nominal consideration, or free of rge, was inaugurated by the competitors of the respondent, and reafter adopted such practice merely as a matter of self defense meet in good faith the competition so tendered it by its com-

petitors; that such practice has been and is contrary to the judgm of the sales managers of respondent and is in their judgment b merchandising."

Do you agree with that statement, that it is bad merchandising give or lease at a nominal sum these pumps and tanks on condit that they will not sell the oil or gasolene of competitors?

A. Yes, I do.

104 Q. (By the ACTING CHAIRMAN.) I would like to ask y this: You are a dealer in lubricating oils?

A. Yes, sir.

Q. Do you confine yourself to lubricating oils and petrole products?

A. Yes, sir.

Q. Of course you have competitors in the sale of lubricating o that is, you have stiff competition, I take it?

A. Yes, sir.

Q. Have you ever had an instance where by reason of the i stallation of these pumps it set you out from the sale of lubricat oils?

A. No; I can not say we have.

Q. So in your case, so far as you have had occasion in the matte it does not follow that because a man has a pump, a free pump, h ties himself up to buy the lubricating oil of the man who sells h the gasolene?

A. No, sir.

Q. That has not been your experience?

A. No.

Q. (By Commissioner COLVER.) You solicit the sale of your l bricants just as freely when you see that one of these pumps a tanks are installed as you would if you did not see one?

A. Well, we do not. Sometimes it so happens that when th make a change they of course drop us on gasolene and they do n come back with the lubricating oil. But in a great many cases it does not make much difference. They will probably buy the gas lene from these people and buy lubricating oil from us, just t same.

Q. (By the ACTING CHAIRMAN.) What did you have in m when you answered the question that Mr. Thompson asked you, th you considered the giving of pumps as bad merchandising? Why it bad?

A. I feel that we can not afford to give pumps. We would n have the capital to put in those pumps. It takes an enormous amou of money to carry a supply of self-measuring pumps for custome

Q. Do you believe that the device really should be the property the man who operates it rather than the property of the man w has the commodity to sell and through which it is sold? Is th the way you feel about it?

A. Yes, sir; I do.

Q. (By Commissioner THOMPSON.) You think it cuts down competition in gasolene?

A. By owning your own tank?

Q. No; by having a tank which simply is given you for a nominal sum?

A. Yes, sir.

Q. (By the ACTING CHAIRMAN.) I wish you would explain why it cuts down competition.

A. For this reason, just as I explained before. I am not in position to sell a man gasolene if he comes to me and says, "Here, I am buying my gasolene from you and have to furnish me a tank and a pump." We have not got the money to keep these tanks and pumps, and it simply takes our business away from us; whereas, if that man buys his own outfit he could come to me anyway and say, "I want to buy some gasolene from you," and it would be all right. But on the other hand, we can not sell them any gasolene. I do not mean to say we can not sell them anything else.

Q. Then, taking that answer that you have just made with the former answer a few minutes ago, the device of the free pump in your opinion tends to reduce the number of competitors to only the strongest companies in the field, those who are enabled by reason of their capital to give the pump. Is that true?

A. Yes, sir.

Q. So, while it reduces the number of competitors, can it be said that it actually reduces competition if more than one man is given the pumps?

A. Yes, sir.

(Witness excused.)

Commissioner THOMPSON (addressing Mr. Osborn). Do you consider our jurisdiction?

Mr. OSBORN. No; I can not say that I am wholly agreed that you have jurisdiction of this entire subject. I do not mean to say that I am taking issue with you in your investigation into this matter or your inquiry into it, but it is a serious question in my mind whether this proposition, as it is handled, comes within the contemplation of the Clayton Act or of the Federal Trade Commission act.

The ACTING CHAIRMAN. We would like to hear you upon that proposition.

Mr. OSBORN. I will say this to you, gentlemen, that I do not know how long you expect to have these matters under consideration, but on that feature of it I would much prefer to submit it to you in the form of a brief, not necessarily a lengthy brief, but one that will set that proposition out. I have given you citations of authorities, and you might examine them and see, then, whether our views correspond or not.

Commissioner THOMPSON. How long will it take you to get that brief up?

Mr. OSBORN. I can give it to you within a week, if that will be time enough.

The ACTING CHAIRMAN. It does not have to be a lengthy brief.

Commissioner THOMPSON. We do not want a lengthy brief.

Mr. OSBORN. Just on this one feature of it?

Commissioner THOMPSON. Yes. As I understand you, you admit our jurisdiction to make the investigation but not our jurisdiction to enter an order?

Mr. OSBORN. If I take any issue with you it would be on that feature of it; yes, sir.

Commissioner THOMPSON. And your position here is that economically the method is sound?

Mr. OSBORN. No. I would not want to go on record as to that. There is a serious question in my mind on that subject.

(Informal discussion occurred which the reporter was directed not to record; after which the following proceedings took place:)

Commissioner THOMPSON. Do you want to introduce any evidence in addition to the stipulation?

Mr. OSBORN. No, I think not.

Are you through now with the Sinclair Refining Company's case or is there further evidence?

Mr. ZECHIEL. There will be further evidence on the economic question, along with all the rest of the cases.

Mr. OSBORN. You mean, along the line of the inquiry to-day?

Mr. ZECHIEL. Yes.

Mr. OSBORN. So long as there is any testimony to be introduced in the Sinclair case of course I expect to be here.

Mr. ZECHIEL. That will continue throughout the commission's case. The last witness may testify with respect to your company and with respect to the rest.

(After informal discussion, which the reporter was directed not to record, the commission adjourned, at 5.10 o'clock p. m., until to-morrow, Saturday, September 27, 1919, at ten o'clock a. m.)

107 Before the Federal Trade Commission.

FEDERAL TRADE COMMISSION *vs.* SINCLAIR REFINING COMPANY.	Docket No. 334.
FEDERAL TRADE COMMISSION *vs.* OKLAHOMA PRODUCING AND REFINING Corporation of America.	Docket 310.
FEDERAL TRADE COMMISSION *vs.* IOWA OIL COMPANY.	Docket No. 336.

FEDERAL TRADE COMMISSION *vs.* L. SMITH OIL AND GASOLENE COMPANY.	Docket No. 314.
FEDERAL TRADE COMMISSION *vs.* BARTLES OIL COMPANY.	Docket No. 332.
FEDERAL TRADE COMMISSION *vs.* RICHARDSON LUBRICATING CO.	Docket No. 330.

Second day.

CONFERENCE ROOM, FEDERAL TRADE COMMISSION,
Washington, D. C., Saturday, September 27, 1919.

The hearing was resumed, pursuant to adjournment, at ten o'clock a. m.

Present: Commissioners Murdock (acting chairman) and Thompson.

Present, also: Mr. Chester L. Zechiel and Mr. Joseph H. Burdeau.

Proceedings.

Mr. ZECHIEL. Mr. Cordell is called in all the cases, in the cases of all the respondents, with no exceptions.

O. L. CORDELL was thereupon called as a witness by and on behalf of the Federal Trade Commission, and being first duly sworn, testified as follows:

Direct examination:

Q. (By Mr. ZECHIEL.) Where is your residence, Mr. Cordell?

A. Oklahoma City, Oklahoma.

Q. With what concern are you connected there?

A. Sloan-Cordell Oil Company.

Q. What is the business of that company?

A. They are oil and gasolene jobbers and retailers.

Q. Over what territory geographically does your company do business?

A. Just in Oklahoma City, in gasolene. We ship a little lubricating oil over the State.

Q. Do you do any business outside of the State of Oklahoma?

A. No, sir.

Q. That is true of both your lubricating business and your gasolene business?

A. Yes, sir.

Q. In conducting your business in wholesale gasolene and lubricating oils do you conduct the business also of leasing or loaning or selling oil or gasolene pumps and tank equipment?

A. We loan gasolene equipment.

Q. You do not sell any of it to any of your customers?

A. We do not make a business of it. We sell an equipment once in a while when we have an opportunity to. We are always glad to sell some of the old ones we have.

Q. Where do you obtain your pump equipments?

A. That we have is bought from Bowser and Wayne. All we have loaned out—is that what you are speaking of?

Q. What you have loaned or any you have sold.

A. That is all—Bowser and Wayne.

Q. Where are those companies located?

Q. (By the ACTING CHAIRMAN.) I do not thing that is perfectly plain. It is not to me. You both loan pumps and buy them and sell them again?

A. That is not what I intended to convey. We have filling stations or retail gasolene stations that we operate ourselves. Of course we buy pumps for those, as those are our own property. Then we have equipment that we buy and loan to garages and other people who buy gasolene for resale. We are not in the business of selling pumps and equipment at all. Once in a while we have an opportunity to sell one and we do. We do not make that any part of our business.

Q. Whether you give or whether you buy them for your own use at a filling station, you buy them from the Wayne people and Bowser?

A. We have some that we buy from Tokheim. I think that would cover all we have.

Q. (By Mr. ZECHIEL.) Where are the Wayne and Bowser concerns located?

A. I think their home office is Fort Wayne, Indiana; both of them.

Q. And the Tokheim Company to which you refer is located where?

A. We do business through the Hayes Equipment Company, of Wichita, Kansas.

Q. Do you know where the Tokheim Company is located?

A. I understand it is also at Fort Wayne. I am not positive.

Q. When you buy these pumps from either of these companies do you have them sent to you in carload lots?

A. No, sir.

Q. How are they shipped?

A. Local shipments.

Q. Do you order a pump for a particular customer?

A. We have done that.

Q. In cases where you order a pump for a particular customer, is it billed to you directly or to the customer?

A. No, sir.

109

Q. When you receive it consigned to you it is received with the intention of immediately placing it to one particular customer; is that true?

A. Sometimes.

Q. These pumps you receive on your own consignment—do you send them out to the customers to whom they are ordered or for whom you have procured them in the same package in which you have received them from the companies who manufacture them and from whom you purchased them?

A. I am not sure about that. I suppose sometimes probably we crate them before we take them out.

Q. Let me get that clear. Pumps that come in you have consigned to you. Are they stored then in a warehouse?

A. No, sir; they are shipped direct to us and taken to our warehouse or direct to the place where they are going to use it.

Q. Many times they are tak'n dir'ctly from the railroad station and freight yards to the customer to whom you have leased or loaned them or sold them?

A. We have done that.

Q. When you store them in your own warehouse you just store them in the same crate in which they are shipped from the vendor?

A. Yes, sir.

Q. When you get ready to place one of these pumps with the customer you just take it out of your warehouse as it was shipped, and place it with the customer?

A. Yes, sir. May I make a little statement in regard to that?

Q. Yes.

A. We bought all of the equipment we have in 1917. At that time I think most of it was taken direct from the depot to the place we were going to use it. When we bought about fifteen or sixteen outfits we discontinued the practice; that is, we discontinued it as far as any new business was concerned. We would not buy any more equipment. If all of the equipment we had was in use and we had an opportunity or request from some one to place some gasolene equipment, we would turn it down. We discontinued the practice of buying any more equipment to loan.

Q. That is what I was going to ask you. You mean that to refer only to loans of equipment. It is a fact that even now you would buy a tank and sell it to a customer of yours?

A. We do not have any opportunity whatever to do anything like that, because all of these pump companies I have named have local representatives.

Q. The pumps which you have loaned to your various customers—under what conditions or agreements or understandings were those loans made, or leases if there were leases?

A. That the gasolene stored in the equipment and sold through it was to be our gasolene.

Q. What was the consideration, if any, that was given for the use of these tanks and their equipment?

A. None whatever. The business——

Q. Nothing but the agreement to use in connection with the particular pumps and tanks your own gasolene products?

A. Yes, sir.

Q. In that connection did you also require the customers to purchase lubricating oils through your company?

A. That was not a consideration. However, it was generally understood that we should have their lubricating-oil business.

Q. Was it understood between you and your customers that they were to buy all of their gasolene from your company?

A. It was.

Q. As a matter of fact, did you have any of these pumps installed with any customers who buy gasolene from some competitor of yours in the gasolene business?

A. That has happened. It is not supposed to happen. We would not put the equipment in for somebody else to use, of course, naturally; but once in a while it happens.

Q. Do any of these customers of yours who have your loaned outfits have more than one such equipment?

A. I do not think they have at this time. They have had, though.

Q. In how many cases was that true?

A. In one case there were two companies furnishing the same party, and both had an equipment in there.

Q. (By Commissioner THOMPSON.) Did that continue very long?

A. It continued something over a year, I think; about a year probably.

Q. With the consent of the two companies that were furnishing the equipment?

A. There was no agreement between the two oil companies at all.

Q. (By the ACTING CHAIRMAN.) But each consented to give the pump?

112 A. I presume the other company did. We consented to let the pump.

Q. (By Mr. ZECHIEL.) What was the occasion of the termination—did I interfere with your answer?

The ACTING CHAIRMAN. No, sir. I wanted the circumstances if I could.

Q. (By Mr. ZECHIEL.) What were the circumstances that terminated that arrangement?

A. The other company changed hands and we saw an opportunity to get all the business. The party did not like the policy of the company—the new company—so he had the other one taken out.

Q. Who was this other company before it changed hands?

A. I think it was the Doty Oil Supply Company. It went out of business.

Q. To whom did they sell their business?

A. They sold part of it to the Atwood Refining Company.

Q. How many such loan agreements have you in the section where ou sell your product?

A. At this time we have about twelve outfits loaned.

Q. How many have you had in the past two or three years?

A. Never more than fourteen or fifteen.

Q. Who are your competitors in the Oklahoma territory?

A. In Oklahoma City? You want all of them?

Q. Yes.

A. The Pierce Oil Corporation, The Magnolia Petroleum Company, The Texas Company, the Crew-Levick, the National Refining Company, the Consumer's Refining Company, the Crown Petroleum Company, the Atwood Refining Company, the Home Petroleum Company, Klein Oil Company, and the A. W. Lee. That is all I can think of.

Q. Does the Oklahoma Producing and Refining Corporation of American control any company as a competitor of yours, or is it itself a competitor of yours?

A. It controls the Crown Petroleum Company. That company is its marketing company.

Q. So that all business that the Oklahoma Producing and Refining Corporation of America does in that territory is done through its marketer—what did you say the name of it was?

A. The Crown Petroleum Company.

Q. That is a fact, is it not?

A. Yes, sir.

Q. Who of your competitors lease and loan oil tanks and pumps for a nominal consideration under tying agreements?

A. I do not know that I can say that positively.

Q. Any that you know of to your own knowledge?

A. I do not know what kind of agreements they have or anything about that.

Q. You do not know any of the agreements?

A. I do not know it of my own knowledge.

Q. Do you know of your own knowledge whether any of these competitors do lease and loan pumps similarly to the practice you have of leasing and loaning pumps?

A. I have always thought they did and have been told they did. I am sure they used to, but I think the larger companies have been discontinuing that practice as fast as they could for some time.

Q. For some time since when?

A. I think in the last two or three years.

Q. Does the Oklahoma Producing and Refining Corporation of America, or its marketing company or subsidiary, lease pumps under similar agreement to yours?

A. I know of only one instance, and I only know that through that the customers have told me.

Q. How long have you been connected with your company?

A. I have been with this company about two years.

Q. What has been your experience prior to your present connection with the oil and gasolene business?

A. I was in the refining and marketing business for ten years.

Q. In the course of your business with the present company or your previous experience did you have occasion to come in contact with garages and retailers frequently?

A. Personally?

Q. Yes, more or less personal contact.

A. Not in my former position, but since I have been in this business I have.

Q. What has been your experience as to whether or not generally, not only with respect to your customers but with respect to all garage people and retailers generally with whom you have come in
114 contact, the garages and retailers generally have more than one gasolene tank and pump outfit at the same time?

A. They do not down in our country.

Q. Is that the general rule or is that almost the universal rule?

A. That is practically universal.

Q. Also from your experience, is it a fact that the garage people and retailers generally do not buy and sell gasolene products of another company than that which has the oil tank and pump installed?

A. That is the general rule.

Q. How general is that rule?

A. Well, it is universal as regards gasolene. As to lubricating oils, lots of them buy their lubricating oils other than from those from which they buy their gasolene.

Q. Is it a fact that the effect of these contracts is to cause retailers to purchase their lubricating oils from the same company who lets them the pump?

A. As a general rule that is true, I think.

Q. (By the ACTING CHAIRMAN.) That is, as I caught this answer in connection with the other answer you have given previously, while in your case there is no understanding, or, at least, contract, that because you furnish a man with a free pump and sell him his gasolene to be used only through that pump, that he shall also buy his lubricating oil, but it naturally follows that he does buy his lubricating oil; is not that true?

A. As a general rule; and we feel that he should.

Q. (By Commissioner THOMPSON.) Do you consider this giving away at a nominal price of tanks and pumps for a consideration that the purchaser will not use them for anybody else's oil but yours a good practice in business?

A. No. I do not. I do not consider it good practice.

Q. Would you like to see it done away with?

A. If it could be done away with so it would not injure the small men in business, like our company, I would like to see it discontinued.

Q. (By Mr. ZECHIEL.) Why do you think it is not a good business practice?

A. Simply because you have a large investment there. It is deteriorating all the time. If no one had them, you would have the same opportunity to get that business.

Q. (By Commissioner THOMPSON.) Competition would be freer?

A. I do not know that it would be any freer than it is now. It probably would be somewhat, but I do not think we would get a bit more business, or any other company would; but we would all get business without the investment.

Q. (By the ACTING CHAIRMAN.) Is it common in your line of business to make a better margin on lubricating oil than on gasolene?

A. Yes, sir.

Q. Would you go so far as to say that in a given station the profits on lubricating oils carry the stations?

A. Ours do not. I will say that our lubricating oils will pay seventy-five per cent of the expense—probably ninety per cent of the actual running expenses of the station, not including only overhead.

Q. (By Mr. ZECHIEL.) I want to go back to the answer you made a moment ago, in which you said, in substance, that you did not think competition would be freer, and that in your opinion you did not believe you would have any more business if this practice were done away with. Am I correct about that?

A. Something like that; I do not remember exactly.

Q. Do you mean to say that if you did not have to furnish the oil tanks and pumps to your customers you could not compete more readily with the larger companies who have very much larger capital to invest in this sort of practice?

A. Here is the situation: The larger companies are installing their own filling stations as fast as they can find locations. That necessitates larger investment. The small concern cannot do that on anything like as large a scale as the big companies do, and it seems in our part of the country that the larger concerns, particularly, some of them, are not trying to get this garage business. They are not trying to get any business where the gasolene is sold to be resold. They are trying to get all of the business they can through their own stations. As I see it, that is the end toward which they are all working, to market their gasolene direct to the consumer, cutting out the middleman, and thereby, in the course of time, cutting out the independent jobber.

Q. Is it not a fact, however, that there is a very large demand still for garage service in gasolene and lubricants?

A. There is a good demand, but in the larger cities it is growing less all the time.

Q. Is it not your opinion, however, that there must be a demand for service in a garage where numerous cars are stored and from which owners depart in the morning?

A. For the actual cars stored in the garage, yes, sir; not for a transient trade.

Q. And also if there were a differential between the marketi price from the large service stations and the tank wagon price y refer to, is not that really back of the difficulty in the garage m running his business from his own equipment?

A. I do not believe I understand that question.

Q. You say that the garage man can not compete with the ser ice station generally. Is that true?

A. I mean to say that they do not compete.

Q. Why is that true?

A. I do not know exactly why it is, but the average garage m does not want to handle gasolene, particularly the smaller on They all say it is a nuisance. They claim they lose money on that they handle gasolene only for the convenience of their c tomers. I do not know why it would be, unless it is because th business is small. Take it in Oklahoma City, I will venture say that the largest garage in town does not sell over one hundr and twenty-five gallons of gasolene a day.

Q. Then it is your opinion that the individual pumps, the cur stone pumps used by garage people and grocery stores and vario other places where curbstone pumps are being used, will decli to a margin where independent jobbers will be crowded out of t business?

A. I think they will, if they do not put in filling stations—in t larger cities, now, I am speaking of.

Q. (By the ACTING CHAIRMAN.) I would like to get that clear in my mind, this evolution from the old pump to the filling stati Take a given route that you have in mind, a daily trip in Okl homa City, not on your part, because you are a dealer in gasole but take the average citizen. He starts down town in the morni from his private garage which, in Oklahoma City, used to be barn, and as he comes down the street he can buy gasolene at s eral places. He might drop in a garage nearby, or he might stop front of a little grocery store that has a pump, or he may go to filling station. Is it your idea that because of the service given a filling station, the fact that a man is on hand instantly, th there is a driveway, a place for the car and some regularit
117 about it, that is liable to induce the citizen who has to co down in the morning to go to the filling station rather th to stop over at the grocery store or the garage?

A. That is certainly true. He would go to the filling station eve time if he had enough gasolene in his tank to get there.

Q. (By Commissioner THOMPSON.) Do you have any filling st tions?

A. We have four that we operate ourselves.

Q. How long have you been running them?

A. One of them for a little over two years, and the others for year or eighteen months.

Q. Have you had them long enough to have an opportunity to study the cost of your investment, the overhead, and interest on your money in the investment?

A. Yes, sir, we have, although the last station we put in has never gotten up to where we think it ought to be, or anything like it.

Q. Does it seem to be a more profitable method than the other?

A. It is not any more profitable, no. The fact of the matter is that you can make more money in your tank wagon business than you can in your filling station business. We would not have them if he did not have to have them.

Q. Is not that likely to be somewhat of a deterrent to the putting in of the filling-station system?

A. It does not seem to be in Oklahoma City. They have them there. I will venture to say about three times as many as we need, anyway, in all parts of the city. You do not have to drive very far in any part of the city to find a gasolene station operated by some oil or gasolene company there.

Q. (By Mr. ZECHIEL.) Do you not find, however, that the leasing and loaning of gasolene pumps often, under the competition in which you are engaged, leads to abuse of that system; that you have customers requiring you to furnish gasolene pumps where you are forced to do so, although you do not make an economical investment?

A. That is not true in our case, because if we do not consider it a good investment we do not put it in.

Mr. ZECHIEL. That is all.

Q. (By the ACTING CHAIRMAN.) I would like to ask, Mr. Cordell, this: Take this Company establishing a filling station on the one hand, and a jobbing company selling gasolene on the other through pumps; in a contest between the two just what permanent advantage is given the man who has merely the pump over his competitor who has the filling station, if the man with the pump is given the privilege of giving it away to the retailer? Where is his advantage in that proposition in a permanent contest?

A. I do not see that he has any.

Q. Then would you say that there is no advantage in the long run in the privilege of giving away a pump to a retailer?

A. I would not say that unless the policy and marketing conditions of the business change. There is an advantage at this time. One of the greatest advantages to the loaning of pumps, in my estimation, is that after you once get a piece of business for your product, and your treatment satisfies your customer, you do not have to spend time and money seeing that fellow to hold his business, losing it and getting it back again. You have got it. The other companies, as a general rule, are theirs, and I think, as far as actual values are concerned, the business is pretty well divided up. I do not know that any company could have any more.

Q. (By Commissioner THOMPSON.) It does, then, from your statement restrict competition, does it not?

A. To that extent it does.

Q. (By Mr. ZECHIEL.) What induced you to change your polic from leasing and loaning pumps and owning service stations?

A. We did not change our policy. We had filling stations, the firs thing we did. We also loaned pumps at the same time.

Q. If you consider the leasing and loaning an advantage, I do no quite grasp why you have the filling stations also.

A. We want all the business we can get, both ways. There are som customers to whom we cannot sell through tank wagons. We ca sell through filling stations.

Mr. ZECHIEL. That is all.

The ACTING CHAIRMAN. Does anyone want to cross-examine thi witness?

(No response.)

(Witness excused.)

119 ROBERT S. COLWELL was called as a witness by and on behal of the Federal Trade Commission, and, being first duly swor testified as follows:

Direct examination:

Q. (By Mr. ZECHIEL.) Where is your home?

A. Fort Wayne, Indiana.

Q. With whom are you connected there?

A. S. F. Bowser Company.

Q. What is the business of that company?

A. The manufacture and sale of oil pumps and tanks.

Q. What is your connection with that concern?

A. Assistant general sales manager.

Q. In your position as assistant general sales manager state more detail what you have charge of?

A. I have the direction of the sales in the eastern part of th United States.

Q. In the eastern part of the United States?

A. Yes, sir.

Q. Just what does that mean—east of the Mississippi?

A. No; east of Ohio.

Q. Are you acquainted with the distribution of your products the western part of the United States, in the central part, rather?

A. I am, yes, for this reason, that all of the orders in the Unite States, except from the Pacific Coast States, pass through my offic as a matter of convenience; so that I am right in touch with the orders.

Q. What is the general geographical territory over which yo company does business?

A. You might put it the whole world—all of the United States an Canada and the principal foreign countries.

Q. I think I asked the business of your company, did I not?

A. Yes, sir.

Q. Are you acquainted with the method by which your business is carried on? I mean as to the manner in which your product is shipped?

A. Generally, yes.

Q. How is that done?

A. It is shipped on orders individually. It may be a unit shipment or a carload.

Q. Both unit and carload shipments?

A. Yes, sir.

Q. I want to ask you in particular whether your company engages in the sale and distribution of these oil tanks and pumps in the State of Oklahoma?

A. Yes, sir.

Q. And in the State of Oklahoma, in the city of Oklahoma City?

A. Yes, sir.

Q. You cover that whole State generally in your business?

A. Yes, sir.

Q. When you receive orders from various oil companies or other companies down there, how are the goods sent to them?

A. Of course we would vary according to the individual case, but generally to the oil companies. Sometimes direct to a customer or an individual they designate.

Q. How are your sales made—through agents?

A. Yes, sir.

Q. What other way? Describe in a general way the system you have of conducting your business.

A. It has direct controlled sales forces who devote their entire time to our business.

Q. How many of such salesmen do you have in this way in that territory, in the central States generally?

A. We probably have a hundred and fifty men.

Q. Are those men engaged exclusively in the sale of your products?

A. Yes, sir.

Q. Does your company sell your products in central Missouri?

A. Yes, sir.

Q. (By Commissioner THOMPSON.) What is the name of the company?

A. S. F. Bowser Company.

Q. (By Mr. ZECHIEL.) What is the general extent of the business you do in the whole of that central States area, in a general way, in the number of pumps and also in value per year?

A. I can not give it to you in pumps, but I can give it to you approximately in orders. They probably run twenty thousand orders in that vicinity a year.

Q. You are talking about the Central States generally, from Canada south to the Gulf?

A. Yes; in the central part of the country?

Q. Yes.

A. Yes.

Q. (By the ACTING CHAIRMAN.) What does a pump sell for?

A. That would depend on the equipment. It runs from about a hundred dollars to five hundred dollars——

Q. (By Commissioner THOMPSON.) That includes the tank?

A. (Continuing.) Between one hundred and a thousand dollars would be more accurate.

Q. (By the ACTING CHAIRMAN.) What would be more accurate?

A. From one hundred to a thousand dollars an outfit. The pumps would sell all the way from twenty-five dollars up to four hundred and fifty dollars, and the difference there would be the capacity of the tank and the material.

Q. Where are they made?

A. Fort Wayne, Indiana.

Q. The actual manufacturing?

A. Yes.

Q. Both tank and pump?

A. Yes, sir. We manufacture all of our own equipment.

Q. When did you start?

A. 1885 the company started.

Q. What did you pump first through these pumps?

A. Kerosene oil, a self-measuring pump for grocery stores, the old goose neck type of pump.

Q. They have always been red?

A. No. That has been the fact for the last eight or nine years.

Q. (By Mr. ZECHIEL.) I wanted to ask you more particularly about these orders. You named the number of orders. What do you mean when you say orders?

A. It might mean more than one pump; it might mean a dozen or fifty.

Q. Would it ever mean less than a pump, or pumping outfit?

A. It might when it was for a tank only, for instance.

Q. Would you say there had been at least as many pumps sold in that general geographical territory as there were orders?

122 A. Yes, sir; absolutely.

Mr. ZECHIEL. I think that is all.

Q. (By the ACTING CHAIRMAN.) About what time did you go into the gasolene pump business? When did the pump begin to be used for gasolene?

A. About 1904, is when it began to be a big thing.

Q. That was coincidently with the appearance of the automobile?

A. Yes, sir.

Q. Then how long, if you can tell me, did it run along before competition reached the stage when the method of leasing for a nominal sum began?

A. I think that has only been in the last four or five years, if that long. It has been comparatively recent, as far as I know.

Q. Would it be possible for you to say whether or not the device of giving away or leasing for a nominal sum appeared simultaneously with the introduction of the filling station?

A. No: I think it preceded it.

Q. The giving away preceded that?

A. Yes, sir: that is my opinion.

Q. (By Commissioner THOMPSON.) I presume there is no way of your telling whether that practice has increased the number of orders you get?

A. No, I think not.

The ACTING CHAIRMAN. What do you expect to show by this witness?

Mr. ZECHIEL. Jurisdiction only, Mr. Murdock.

The ACTING CHAIRMAN. He does not know anything about the economic situation at all.

Mr. ZECHIEL. And nobody from Bowser's headquarters knows. The only way I could get that evidence would be to call one hundred and twenty-four agents. I would have to call those agents particularly to get that evidence. I think we have probably got it through the oil company witnesses.

Q. (By the ACTING CHAIRMAN.) I would like to ask this question as a trade matter:

In manufacturing pumps do you manufacture them always for Bowser, or will you manufacture for other sellers of gasolene if they desire? Suppose the Sinclair Oil Company came to you and wanted pumps. Would you manufacture them for the Sinclair Oil Company?

A. Our business, you know, is only the equipment. We do not sell any gasolene or oil.

Q. I know that is true.

A. But we do business with the Sinclair people.

Q. And do manufacture for them?

A. Only under our own name.

Q. That is what I wanted to know.

A. No: we never manufacture with any label but the Bowser label.

Q. You manufacture a pump for the Sinclair Company as a Bowser pump but carrying above the pump this Sinclair sign?

A. We have done that. We do that right along—finish it in what we call, in that case, the Sinclair finish.

Q. You are just interested in the sale of pumps?

A. Yes, sir.

Q. (By Mr. ZECHIEL.) When you say you finish it in the Sinclair finish, just exactly what does that mean?

A. That means, in their case, a green pump with a white top, and some——

Q. That portion above the ground?

A. Yes, sir. The pedestal would be green—I think that is their trade-mark color—and the top part is white, which is another one of

their colors, and gold striping, and then the Sinclair trade-ma name on there.

Q. (By the ACTING CHAIRMAN.) On the lamp? I think I have s that.

A. I do not think the Sinclair people use a lamp. Some of t other companies do.

Commissioner THOMPSON. Does anybody care to cross-examine t witness?

(No response.)

(Witness excused.)

Mr. ZECHIEL. These are all the witnesses we have to-day. None the others have appeared.

The ACTING CHAIRMAN. Are you through now?

Mr. ZECHIEL. For to-day. There will be other witnesses on M day.

(Whereupon, at 11.30 o'clock a. m., the commission adjourned un Monday, September 29, 1919, at ten o'clock a. m.)

124 Copy No. 3.

Before the Federal Trade Commission.

FEDERAL TRADE COMMISSION *vs.* SINCLAIR REFINING COMPANY.	Docket No. 334.
FEDERAL TRADE COMMISSION *vs.* OKLAHOMA PRODUCING & REFINING CORPORATION of America.	Docket No. 310.
FEDERAL TRADE COMMISSION *vs.* IOWA OIL COMPANY.	Docket No. 336.
FEDERAL TRADE COMMISSION *vs.* C. L. SMITH OIL AND GASOLENE COMPANY.	Docket No. 314.
FEDERAL TRADE COMMISSION *vs.* BARTLES OIL COMPANY.	Docket No. 332.
FEDERAL TRADE COMMISSION *vs.* RICHARDSON LUBRICATING CO.	Docket No. 330.

Washington, D. C., September 29, 1919. Hulse & Allen, Offici Reporters, Whitford Bldg., Washington, D. C.

125 Before the Federal Trade Commission.

FEDERAL TRADE COMMISSION *vs.* SINCLAIR REFINING COMPANY.	Docket No. 334.
FEDERAL TRADE COMMISSION *vs.* OKLAHOMA PRODUCING & REFINING CORPORATION OF AMERICA.	Docket No. 310.
FEDERAL TRADE COMMISSION *vs.* IOWA OIL COMPANY.	Docket No. 336.
FEDERAL TRADE COMMISSION *vs.* C. L. SMITH OIL AND GASOLENE COMPANY.	Docket No. 314.
FEDERAL TRADE COMMISSION *vs.* BARTLES OIL COMPANY.	Docket No. 332.
FEDERAL TRADE COMMISSION *vs.* RICHARDSON LUBRICATING CO.	Docket No. 330.

Third day.

CONFERENCE ROOM, FEDERAL TRADE COMMISSION,
Washington, D. C., Monday, September 29, 1919.

The hearing was resumed, pursuant to adjournment, at ten o'clock a. m.

Present: Commissioners Murdock (acting chairman), Thompson, and Colver.

Present, also: Mr. Chester L. Zechiel, attorney-examiner, and Mr. Joseph Burdeau, attorney-examiner.

Appearance: As previously noted.

126 *Proceedings.*

Mr. ZECHIEL. There was a misunderstanding, Mr. Thompson. Messrs. White and Case filed an answer for the Oklahoma Producing and Refining Corporation of America. They also acknowledge receipt of the notice of the date set for the hearing on the 26th. They did not appear. Mr. King appeared for his company, but was not of record.

Commissioner THOMPSON. Is that the company you are now referring to?

Mr. ZECHIEL. Yes, sir: the Oklahoma Producing and Refining Corporation of America. He did not know anything about the fact that White and Case had been retained from New York, and therefore did not appear on the 26th. He is here this morning, however.

Commissioner THOMPSON. Is Mr. King of counsel, or is he a representative of the company?

Mr. ZECHIEL. He is the attorney for—is it a subsidiary company or the operating company?

Mr. KING. The operating company.

Mr. ZECHIEL. But not of the Oklahoma Producing and Refining Corporation of America, who are respondents.

Commissioner THOMPSON. They have not answered the subpoena?

Mr. ZECHIEL. Mr. White, of New York, returned the notice duly signed as having been accepted, but he did not appear before the commission. I want to ask that this case be continued and that the evidence be concluded for the commission later on, perhaps in the latter part of October, to be taken probably in Nashville, Tennessee, or down there somewhere; my reason being that so far as the commission is concerned there are several witnesses, including the Texas Company and one or two other companies, who operate in his territory, and those witnesses will not be here. There will be a hearing at that time for the Kentucky Company and the Texas Company and the Kentucky Independent Company and, I think, one or two other companies in that southwest territory, in that general territory. The Oklahoma Producing and Refining Corporation of America are not immediate competitors, so far as the retailers are concerned, with the Standard Oil people, and therefore are not necessarily involved in this proceeding.

Commissioner THOMPSON. All right.

Mr. ZECHIEL. I will call Mr. Drake.

127 SETH C. DRAKE was called as a witness by and on behalf of the Federal Trade Commission, and, being first duly sworn, testified as follows:

Direct examination:

Q. (By Mr. ZECHIEL.) Mr. Drake, with what company are you associated?

A. The Standard Oil Company of Indiana.

Q. How long have you been with that company?

A. About twenty-three years.

Q. Did you have any experience generally in the oil industry prior to your association with that company?

A. About ten years previous to that.

Q. During the ten years previous to your association with the Standard Oil Company of Indiana, with what company were you associated?

A. The Consolidated Tank Line Company.

Q. What were your general duties during the time of your employment, the ten years prior to your association with the Standard Oil Company of Indiana?

A. In the marketing department, working as salesman and as assistant to managers of the marketing department.

Q. Over what territory, geographically, in a general way, were your duties during those ten years?

A. In Kansas, Missouri, Iowa, South Dakota, and Nebraska.

Q. Since you have been employed by the Standard of Indiana, what have been your duties, in a general way?

A. In the marketing department in the middle western territory.

Q. What is your present position in that company?

A. General manager of the sales department.

Q. How long have you been general manager?

A. Four years and a half.

Q. Prior to that time what was your official position?

A. I was manager.

Q. While you were manager of the company, what was the general geographical territory over which you were manager?

A. Part of the time at Indianapolis, part at Dubuque, Iowa, part at Sioux City, Iowa, and at St. Joe, Missouri.

Q. Since you have been general manager of the Standard Oil Company of Indiana what has been the territory over which you have had supervision?

A. Indiana, Michigan, Illinois, Wisconsin, Iowa, Minnesota, North and South Dakota, Kansas, and Missouri.

Q. You are acquainted with the general method of business conducted by that company?

A. In the sales department, yes, sir.

Q. What is the general business in which your company is engaged?

A. In the manufacture and sale of petroleum and its products.

Q. Do you sell oil in all the territory over which you have geographical jurisdiction?

A. We do.

Q. How do you get this product, the oil and gasolene?

A. It is manufactured at the refineries.

Q. Prior to the time it reaches the refineries where is your general source of supply?

A. We buy the most of it from the Perry Pipe Line Company.

Q. From what territory does that pipe line extend?

A. From the southwestern fields.

Q. Including, generally, what States?

A. Kansas, Oklahoma, and what is known as the southwestern field.

Q. Where are your refineries located?

A. Whiting, Indiana; Wood River, Illinois, and Sugar Creek, Missouri.

Q. After your crude oil is brought in by the pipe lines to your refineries, what is the general disposition of the product that you refine, geographically?

A. It is made into the various products at these refineries and then sold through these States which I named. Is that what you mean?

Q. That is what I am getting at, yes. You do a wholesale business generally throughout these States?

A. Yes, sir.

Q. In connection with your gasolene business and oil business generally, do you buy and sell gasolene and oil pumps and tanks?

A. We do.

Q. In all the territory over which you operate, generally?

A. Yes.

129 Q. Where do you purchase these pumps and tanks?

A. Gilbert and Parker Company.

Q. Where is that concern located?

A. Springfield, Massachusetts.

Q. How do you have these pumps shipped to you in your territory?

A. They are crated and loaded into cars and shipped to us in carload lots to various distributing points in different states.

Q. How do you order these pumps from the Massachusetts company in a general way?

A. In carload lots, as a rule.

Q. I meant rather preliminary to that. What are the negotiations that lead up to the purchase of these pumps? Do you file an application or send in an order or fill out an order blank?

A. We send them an order for a certain number of these pumps or tanks.

Q. To be delivered at any particular place?

A. To be shipped to some point in our field; yes.

Q. As a result of that order are those pumps shipped to these various points of yours in the various states?

A. Yes.

Q. What happens to the pumps when they arrive at these various points in your territory?

A. They are unloaded from the car and put into a warehouse.

Q. Whose warehouse?

A. The warehouse of the Standard Oil Company of Indiana.

Q. From there what happens to these pumps?

A. They are sold and leased to various customers.

Q. When you sell or lease these pumps and distribute them to your various customers, do you sell or lease the same in the original crate in which they are shipped into this warehouse?

A. We do.

Q. Mr. Drake, in your experience in this territory generally, do you come in contact with the various garages and retailers generally to whom you sell your product?

A. We do.

Q. I am asking you personally, now.

A. No, sir; not personally I do not.

Q. During your past experience, which has been about thirty-three years, has it not?

A. Yes, sir.

Q. (Continuing.) Have you come in contact with the individual garages and retailers?

A. I have.

Q. From your experience in that connection do you know as a matter of fact whether or not garages and retailers generally use more than one gasolene pump in the general distribution of the product or resale?

A. They do.

Q. See if I am clear about that. Here is John Smith, we will say, living at a town in Illinois. He is a garage man. Does he have more than one gasolene pump and tank from which he sells gasoline?

A. Oftentimes they have two; yes.

Q. They have more than two, frequently, or not?

A. No; there are a great many that have two, but I do not recall any that have any more than two.

Q. (By Commissioner THOMPSON.) Do they have two on the same premises?

A. Yes, sir; oftentimes.

Q. Why do they have two?

A. Sometimes one at the curb for supplying people that go by, and then another one inside, sometimes two inside, if they are a very large garage, to supply the people who keep cars in the garage.

Q. Have you ever known of an instance where, having, for example, the pump of the Standard Oil Company of Indiana, they would have the pump of another competitor on the premises?

A. I have known of those cases.

Q. Many?

A. No, sir.

Q. Would you say very few?

A. I have known of a few.

Q. How many can you recall?

A. Well, I could not name any specific number, but I have known of a number. I should say I have heard in the last few years of probably twenty-five or thirty cases of that kind, that I have personally heard of.

Q. That covers your entire field?

A. In a general way. Of course there may be many of those things that I would not hear of.

Q. But you would say that as a rule that situation does not exist?

A. Well, I have known of a number of cases of it. I do not exactly understand——

Q. It has been testified here by a number of witnesses that in practically all cases—perhaps there may have been an exception in one or two instances—where a man is given for a nominal sum a pump and tank by one company, no competitor gets a pump or tank in on the premises while the pump and tank of the original party is on the premises; and I was wondering if your experience agrees with that?

A. Of course, in most cases they only have one pump, and that will be loaned by somebody, and of course there would not be anybody else's gas handled as a rule, but in many cases they do have two tanks and pumps and handle two different kinds of gasolene.

Q. And have the gasolene of more than one competitor go through the pump, or through a pump?

A. Oh, yes. Many garages buy gasolene of two or three different companies. Is that what you mean?

Q. Yes.

A. Yes, sir. They buy from us one week, of some other company next week, and another company a week after.

Q. You did have a contract, did you not, with them, when you gave a pump for a nominal sum, and you retained the exclusive right to have only your gasolene go through that pump?

A. In many cases they bought of us exclusively.

Q. And where they bought of you exclusively, then they could not use some one else's pump. Is that correct?

A. We do not restrict them from putting in some one else's pump and tank. They could put in some one else's pump and tank.

Q. But you did restrict them from using anyone else's oil and putting it through your pump?

A. I do not think the contract read that way. I do not think it insisted that they should put no one else's gasolene into this pump.

Q. That was my recollection of your contract. I may be wrong about it.

Q. (By Mr. Zechiel.) It is a fact, is it not, Mr. Drake, that your contract provides that no gasolene of a competing company or any other oil company shall be used in connection with any pump or tank that you lease to a customer?

132 A. I do not understand that they could not put in other gasolene into the tank.

Commissioner Thompson. May I ask if there is already on record a stipulation to that effect?

Mr. Zechiel. Yes, sir; there is.

Commissioner Thompson. The Standard Oil Company of Indiana has stipulated that to be the fact?

Mr. Zechiel. That is true.

I will reserve the right—I do not know whether I will care to do so later on and interrogate on it—to offer in evidence the stipulation of the Standard Oil Company of Indiana, or that portion referring to the contract.

Commissioner THOMPSON. I suggest that you bring the stipulation here and have the witness look at it and then ask him to refresh his memory.

Mr. ZECHIEL. The witness has a copy of that stipulation. [After referring to a paper.] I do not believe you have a copy of the contract, have you?

The WITNESS. No.

Q. (By Mr. ZECHIEL.) In connection with your handling of pumps and tanks, Mr. Drake, did you lease and loan these pumps and tanks to various customers?

A. We did.

Q. What were the general conditions under which these pumps and tanks were leased and loaned, if you remember them?

A. At a nominal sum, prior to July 1st.

Q. Don you recall now, having thought it over, whether or not in addition to their being charged only a nominal sum, there was a restriction as to the use that should be made of these pumps, whether they should be used to handle gasolene of a competitor or not?

A. No, I do not; I do not recall.

Q. Are you acquainted with the fact that a complaint was brought against your company by the Federal Trade Commission?

A. Yes, sir.

Q. Something more than a year or two ago?

A. Yes, sir.

Q. Do you know the general nature of that complaint?

A. With reference to leasing and loaning pumps and tanks?

Q. Yes, sir.

A. Yes, sir.

Q. What was the general charge in that respect?

A. The charge, as I understand, was that we were leasing and loaning these tanks and pumps at a nominal sum and it was working a hardship on competitive companies that were not able to lease and loan pumps and tanks in the same way.

Q. What was the outcome of that proceeding?

A. We discontinued it——

Q. I mean, the outcome of the proceeding itself. Was there ever an order issued against your company?

A. Yes, sir; there was an order issued against us to cease and desist from leasing and loaning them at a nominal sum.

Q. I hand you this paper——

Commissioner THOMPSON. What is that you hand him?

Mr. ZECHIEL. I want to introduce this in evidence.

Commissioner THOMPSON. I know, but identify it.

Mr. ZECHIEL. A copy of the order to cease and desist in Docket No. 85, Federal Trade Commission versus Standard Oil Company of Indiana, an Indiana corporation.

Q. (By Mr. ZECHIEL.) Is that a copy of the order that was entered against your company in that proceeding as to which you are testifying?

A. Yes, sir.

Mr. ZECHIEL. If the commission please, I offer this copy of order to cease and desist in Docket No. 85.

(The order referred to was received in evidence, marked "D Exhibit No. 1.")

Q. (By Mr. ZECHIEL). I hand you the tank-loan agreem Exhibit A in the answer of the Standard Oil Company of Ind in Docket No. 85, Federal Trade Commission versus Standard Company, an Indiana corporation, which purports to be a tank- agreement entered into with customers of the Standard Oil C pany of Indiana. I direct your attention to a paragraph in purported tank-loan agreement and ask whether or not that p graph requires the lessee of an oil tank and pump to use onl connection with that oil tank and pump gasolene sold by the St ard Oil Company of Indiana?

A. (After examining the paragraph referred to.) Yes.

Q. That is correct, is it?

A. Yes, sir.

Q. (By Commissioner THOMPSON.) Mr Drake, it was custom was it not, to enforce that clause of the contract?

A. No; I do not know that it was ever enforced, nor e

134 taken out because a man put anybody else's gasolene in. I ever recall.

Q. (By Mr. ZECHIEL.) Did you ever have any complaints f any of your agents that anybody ever violated that provision the contract?

A. I do not recall any.

Commissioner THOMPSON. May I not ask if the stipulation d not admit that fact?

Mr. ZECHIEL. I do not think the stipulation does say, Mr. Tho son, that that is the fact.

The ACTING CHAIRMAN. Does or does not? What did you s

Mr. ZECHIEL. The stipulation does not say anything about t feature of the practice.

Q. (By Mr. ZECHIEL.) Mr Drake, after this order to cease desist, about which you have testified, in Docket No 85, was ser upon the Standard Oil Company of Indiana, did the Standard Company of Indiana attempt to follow out the requirements of order to cease and desist?

A. It did; yes, sir.

Q. What were the results experienced by your company follo ing its attempt to obey the order to cease and desist?

A. Many of the tanks and pumps were bought by the custom and then they made arrangements to buy their goods from competitor.

Q. In every case the customers purchased your oil tanks a pumps that you had installed under the lease?

A. No, not in every case.

Q. What is the fact about other cases?

A. Some of them were taken out and some of them were re-leased a reasonable consideration.

Q. In attempting to cancel these contracts and remove the pumps lease them under a reasonable rental, did you lose any customers?

A. We have.

Q. Describe in detail those occurrences.

A. In many cases because we refused to lease them at a nominal m we took the tanks and pumps out and they refused to buy of us future. In some cases they bought them and agreed to buy from competitor because of the fact that they could lease them. He uld pay them a rental for the privilege of putting his goods in em.

Q. Upon learning of that fact in connection with your attempt to follow the order of the commission in Docket No. 85, did you make any effort to have the commission modify the der?

A. Mr. Martyn can answer that.

Q. Do you know it to be a fact, Mr. Drake?

A. Yes.

Q. What was the general nature of that effort made?

A. I do not know.

Commissioner THOMPSON. Perhaps the witness does not know that. s counsel is probably the one that does.

Mr. ZECHIEL. I supposed that Mr. Drake, having made an affidavit connection with it, would know.

Q. (By Mr. ZECHIEL.) Do you know as a matter of fact whether ur company made a motion before the commission to have this der modified or set aside?

A. I do.

Q. I am handing you herewith a copy of the motion and am diting your attention to the affidavit purporting to be your own davit, Mr. Drake, and asking you if it is, as a matter of fact, ur affidavit?

A. It is; yes.

Q. On page 3 of that affidavit, reading from the affidavit, it is ted:

"Affiant further says that he has been connected with the sales partment of respondent for many years last past, and was so nected with it when the practice of loaning and leasing pumps l tanks to customers was inaugurated, and said practice of leasor loaning tanks and pumps, for a nominal consideration, or free charge, was inaugurated by the competitors of the respondent, l respondent thereafter adopted such practice merely as a matter self defense to meet in good faith the competition so tendered it its competitors; that such practice has been and is contrary to judgment of the sales managers of respondent and is in their gment bad merchandising."

hat is a fact, is it?

A. Yes, sir.

Q. How much of an investigation had you made at the time y signed this affidavit?

A. I had taken it up with the sales managers of the entire ter tory and got expressions from all of them.

Q. (By Commissioner THOMPSON.) Why do you say it is b merchandising? How do you arrive at that conclusion?

A. Because I never thought it was good merchandising to give man something to get him to buy something from you.

Mr. ZECHIEL. That is all I care to ask the witness.

136 Commissioner THOMPSON. Does any one wish to cro examine the witness?

(No response.)

Mr. OSBORN. I want to ask you one question, Mr. Zechiel. Is th affidavit in evidence? Did you introduce it in evidence?

Mr. ZECHIEL. I did not introduce it in evidence.

The ACTING CHAIRMAN. This last affidavit?

Mr. ZECHIEL. Yes, sir.

That is all, Mr. Drake.

(Witness excused.)

H. F. BAGBY was called as a witness by and on behalf of the Fe eral Trade Commission, and, being first duly sworn, testified a follows:

Direct examination:

Q. (By Mr. ZECHIEL.) With what company are you connecte

A. White Eagle Oil Refining Company of Wichita.

Q. How long have you been connected with that company?

A. Ever since its organization, July, this year.

Q. Prior to that time what was your experience generally in t oil and gasolene business?

A. I was secretary of the American Oil and Gasolene Compa five years prior to that.

Q. Where did the American Oil and Gasolene Company operat

A. In Kansas and Colorado.

Q. Generally throughout those States?

A. Eastern Colorado and generally in Kansas—western Kans mostly.

Q. Where does the White Eagle Oil & Refining Company operat

A. Kansas and Colorado; that is, the distribution end of it business.

Q. You mean that is where they do their wholesale business?

A. That is right.

Q. You are acquainted with their method of doing business, a you?

A. Yes, sir.

137 Q. Do they sell gasolene from out of the State of Kans into the State of Colorado?

A. Yes, sir.

Q. Kansas is your headquarters State, is it not?
A. Yes, sir.
Q. In connection with your gasolene business do you also do a business in oil tanks and pumps?
A. Very little.
Q. Do you lease or loan oil tanks and pumps?
A. This company, since its organization in July, has not sold any tanks and pumps or leased any.
Q. (By the ACTING CHAIRMAN.) Or given them away?
A. Or given them away; no sir.
Q. (By Commissioner THOMPSON.) Why have you not done so?
A. Our company has eighty per cent of its business in country stations—that is, where we have any filling stations to compete with—and the garages buy their pumps direct from pump manufacturers in our territory.
Q. (By Mr. ZECHIEL.) You do not handle any pumps at all—your present company does not?
A. We do not make a business of it. We have a pump company or two that we recommend, but we allow the customer to buy them.
Q. Who are your competitors in that territory?
A. Standard Oil Company of Indiana, mostly.
Q. Does the Sinclair Company sell there?
A. They are a competitor, too.
Q. Does the C. L. Smith Oil & Gasolene Company sell in your territory?
A. Not that I know of.
Q. What are the other competitors besides the Standard?
A. The Sinclair is the next largest, and then there are several small companies.
Q. Who are they?
A. The Puritan Oil Company is one, and the Crew-Levick is a competitor of ours.
Mr. ZECHIEL. I think that is all.
Q. (By Commissioner THOMPSON.) Did I understand you to say that since July 1st you had ceased this practice?
A. That was the beginning of our organization. We absorbed these other companies as of July 1st.
Q. Is it your intention not to continue this practice or to adopt this practice?
A. Unless we are forced to it. We do not approve of the practice.
Q. Why do you not believe in the practice or approve of it?
A. It is not a profitable way of doing business, we do not think.
Q. (By the ACTING CHAIRMAN.) Have you any filling stations?
A. We have three in Topeka. We are building three or four in Wichita. That is all the filling stations we have. Practically all of our business is in the small towns where they do not have filling stations.

Q. Would you say, as a practical dealer in gasolene, that the evolution is towards the filling stations, away from the occasional pump?

A. That seems to be the trend.

Q. Why is it true?

A. Well, I think on account of the more convenient service, more than anything else.

Q. You have not had sufficient experience with the filling stations personally to know whether or not, considering the fact that it is located on expensive real estate, generally on a corner where traffic passes in large volume and the fact that there is not constant employment for the attendant—you have not had the experience to prove to you that it is profitable?

A. Our experience is not broad enough to form an opinion on that just yet.

Q. Did you make any previous examination before you went into the filling station business?

A. We only went into the filling station business in these two towns, where it is, you might say, a filling station proposition. The garages hardly handle very much stuff except in large towns. We did not investigate it, only from a gallonage standpoint.

Q. Do you handle lubricating oils?

A. Yes, sir.

Q. In your experience in the past, would you say that there is more profit in the sale of lubricating oil than there is in the sale of gasolene?

A. Yes, sir.

Q. Is it sufficient to enable you to say that in a given station which sells lubricating oil, by reason of its greater margin it would carry the gasolene expense? That is, is it so much more profitable?

A. I would hardly say that.

139 Q. (By Commissioner THOMPSON.) Do you think the filling station will ever drive out the pump entirely? Will there not be a demand for both?

A. I would say that, generally speaking, over the territory, it will be a great many years before they will entirely drive out the pump business.

Q. In other words, the filling stations can only exist where there is concentration of people and business?

A. That is right.

Q. (By the ACTING CHAIRMAN.) Where does that point of concentration begin? You are from my territory, and I am familiar with the towns. Wichita, of course, has filling stations, but Valley Center, which is a town of 500 people, ten miles from Wichita, has not, has it?

A. It has not, and it would not be a paying proposition in a town of that size.

Q. Has Sedgwick, which has 1,200 people?

A. No, sir.

Q. Has Newton, which has 12,000?

A. Yes, sir; they have. The average dividing line would be between two and three thousand people, although over there in the western part of the State there are hardly any filling stations in most of those county seats out there, two thousand to four thousand people.

Q. (By Commissioner THOMPSON.) How long have you had these filling stations in Topeka?

A. The company we took over has had them there about two years, I think.

Q. You have not had time to observe whether it is a paying proposition as against your overhead and the amount of your investment, and so forth?

A. In Topeka we consider it a paying proposition.

Q. (By the ACTING CHAIRMAN.) You consider it poor merchandising to give away something, to sell something, do you not?

A. Yes, sir; that is our attitude.

Q. So, since July 1st you have given away or leased at a nominal figure no pumps?

A. That is right.

Q. That was your inspiration, that was your motive, because it was not good merchandising. What is the difference between giving away or leasing a pump at a nominal figure and running a filling station at a loss?

A. You would have to get figures on that. It might pay, to give away a pump and let somebody else bear the operating expense.

Q. I just wanted your idea about it. Of course you are new in the filling-station proposition.

Q. (By Commissioner THOMPSON.) Is there much competition in the filling-station system in Topeka?

A. Oh, yes.

Q. In Wichita?

A. Both of them.

Q. (By the ACTING CHAIRMAN.) Why in the western country, particularly in Wichita and Topeka, do the men who own filling stations go into so much landscape ornamentation and why do they avoid it in a city like Washington? What is the reason for that?

A. That is a puzzle to me. I noticed that to-day, here.

Q. (By Commissioner THOMPSON.) Why the ornamentation? Is that for advertising purposes?

A. I think that a good many of these filling stations are being built in the residence districts and that is probably a local requirement, to a certain extent. We had quite a little trouble the other day getting a location out on Erie and Douglas, and we had to show our plans to the commission and agreed to beautify the grounds. I think it is more a competitive proposition back there.

Q. (By the ACTING COMMISSIONER.) Does it make any appreciable difference in the price of gasolene? Do these men have to pay for those geraniums or not?

A. I do not think so.

The ACTING CHAIRMAN. Is there any cross-examination?

Mr. OSBORN. Yes.

Cross-examination:

Q. (By Mr. OSBORN.) Is it your experience with your company that if you start in the filling-station business in a community or locality you then lose the garage business?

A. That is the general experience.

Q. That you can not very well do both?

A. That wears off in time, I know, but ordinarily that is the attitude of the garages, that they will buy from another competitor.

Q. Whether you furnish them pumps and equipment or not?

141 A. That is right.

The ACTING CHAIRMAN. Why is that, Mr. Osborn? Will you find out? I would like to know why.

Mr. OSBORN. I was going to ask the witness what his explanation of that is.

The WITNESS. Well, generally, the garages in my territory would make about two and a half to three cents a gallon on their product. The filling station comes in and it immediately cuts that profit to a cent a gallon. Naturally there is a hostile attitude on the part of the garages. They generally have local associations, and I have known them quite often to agree not to buy from a company that put in the first filling station.

Q. (By Mr. OSBORN.) Then, with a garage like that, if the company had started in in the establishment of filling stations in Witchita or Topeka, it could not give away these pumps and tanks if it wanted to?

A. Witchita and Topeka are a little different proposition. You might say the trade there and the garages are all educated in the filling station proposition. The companies there, unless, I think, the Standard Oil Company, discontinued it the first of July, but other companies there, up to that time—I do not know about it since. We have not—they have been giving pumps; but I think one company would have as much chance as another in Wichita and Topeka. Whether that would have been true when the filling station proposition was first started or not I cannot say. That has been several years ago.

Q. It is your experience that the tendency is if a company gets in a town and establishes a filling station business, the company then loses the garage business that it formerly had?

A. That is generally the case, in my experience.

Q. That business then falls to companies that do not establish a filling station?

A. That is right. Of course, in time that wears off, and they are all somewhat on an equal basis. But that is the first feeling in the garage trade.

Q. Is it your experience that that is one of the risks the larger companies run in establishing filling stations, that it tends to lose the garage business?

A. I would say that any company would run that risk.

Q. That leaves the garage business to fall to what might be called the smaller companies or the smaller dealers?

142 A. Eventually if the town is large enough the trend will be to the filling station way of marketing. Of course a great many garages will refuse to handle it on a cent a gallon and will discontinue it. That has been my experience, too—quit handling gasolene.

Mr. OSBORN. I believe that is all.

(Witness excused.)

Mr. ZECHIEL. I want to introduce in evidence the stipulation between the Federal Trade Commission and the Sinclair Refining Company in Docket No. 334, for whatever it may be worth on the question of jurisdiction generally in the various cases.

(The stipulation referred to was received in evidence, as commission's Exhibit No. 1.)

W. E. WILLIAMS was called as a witness by and on behalf of the Federal Trade Commission, and, being first duly sworn, testified as follows:

Direct examination:

Q. (By Mr. ZECHIEL.) Mr. Williams, with what company are you connected?

A. Iowa Oil Company.

Q. Is the Iowa Oil Company one of the companies who is respondent here in these hearings?

A. Yes, sir.

Q. How long have you been connected with the Iowa Oil Company?

A. Five years.

Q. Prior to that time had you had any experience generally in the oil and gasolene business?

A. I was with the National Refining Company about a year.

Q. Any other experience?

A. No, sir.

Q. What is your position with the Iowa Oil Company?

A. Manager.

Q. Over what territory generally, geographically, does the Iowa Oil Company conduct business?

A. Well, we have a small part of northeastern Iowa and a small portion of Illinois and Wisconsin. We have one station in 143 each case, one at Galena and one at Prairie du Chien, Wisconsin.

Q. You mean, you have one station in Illinois and Wisconsin?
A. Yes, sir.
Q. And most of your business is confined to the State of Iowa?
A. Yes, sir.
Q. But you do ship gasolene and refined oil and similar prod from the State of Iowa to Illinois and Wisconsin?
A. Yes, sir.
Q. In connection with your gasolene business do you lease and l oil tanks and pumps?
A. We do.
Q. Do you also sell oil tanks and pumps?
A. We do.
Q. Where do you purchase your pump equipments generally?
A. We are using the S. F. Bowser outfit.
Q. The S. F. Bowser Company is located at——
A. Fort Wayne, Indiana.
Q. How do you have those pumps shipped to you when you them and supply them to your customers?
A. We order them just as we need them.
Q. Do you mean that if you have a customer who needs a pump order it for that customer?
A. Yes, or for ourselves, and place it.
Q. Do you frequently order pumps and tanks shipped dire from the Bowser factory at Fort Wayne, Indiana, to your custom over in Iowa, or——
A. No, sir.
Q. It is always billed to you?
A. Every outfit is; yes, sir.
Q. But you buy it expressly for one particular customer.
A. Yes, sir.
Q. It is the general practice to install that particular pump t you order for the particular customer, with the customer?
A. Yes, sir.
Q. What are the general terms of your contract?
A. Up until last spring we placed them on a basis of one doll month rental.

144 Q. You do not have a copy of your contract with you?
A. The new one we have—I think I have one here [hand a paper to Mr. Zechiel]. The new contract we made along in Ma or April. We turned all of those over.
Q. With reference to the contracts and agreements under wh you did operate prior to the one which you have just handed here, what were the general terms and conditions of those contra
A. Practically the same terms, with the exception of the last pa graph of that agreement.
Q. What was the provision in that particular paragraph?
A. It was in regard to handling other products at the station.

Q. In general, what were the terms of your contract? How did you install these pumps with your various customers—on what condition or understanding?

A. They were to pay a rental of one dollar a month and that they were to use only our gasolene in the pump during the life of the agreement, which was one year. They had the right at the end of the year to buy the outfit at a reasonable price, allowing for depreciation.

Q. Did you collect this dollar a year?

A. Dollar a month—yes, sir. That practically kept the pump in repair as far as renewing the hose was concerned. That is about all we ever figured on getting out of it.

Q. You never thought that that dollar a month was a reasonable return on the investment?

A. Well, no. We figured that our profit on the merchandise put through it was paying us a reasonable profit.

Q. How many pumps and tanks did you install with your customers under similar agreements and understandings?

A. We have twelve stations. Nine of those are complete outfits. Two of them, where we furnished the head only. The tanks are furnished by the people that we are doing business with. And one outfit is placed with a concern where it also has a National Refining Company outfit. We practically have nine stations of our own.

Q. These are the stations you were referring to a while ago when you said you had one station up in Wisconsin and one in Illinois?

A. No, sir. These are tank-wagon service stations.

Q. (By Mr. BURDEAU.) Do you have any other outfits in other States than Iowa?

145 A. One pump at a store in East Dubuque.

Q. (By Mr. ZECHIEL.) What is the difference between these pump stations you have up in Wisconsin?

A. We have regular tank stations in Wisconsin and Illinois, tank-wagon stations.

Q. You ship and serve out of the station?

A. Yes, sir.

Q. How long have you been engaged in the practice of leasing pumps and tanks?

The ACTING CHAIRMAN. Mr. Zechiel, you are leaving the record a little bit up in the air, I think, because so far as the Commission and the witness and the record are concerned, as I understand it, we do not known what the clause in the second agreement is about which you were talking.

Mr. ZECHIEL. The second agreement I did not intend to put in evidence at all, Mr. Murdock. It was an agreement under which we have b'ought this complaint that I was referring to only.

Q. (By Mr. ZECHIEL.) This paper you handed me is the one you are operating under now?

A. Yes, sir.

Mr. ZECHIEL. I am calling the witness' attention to a memorandu of agreement entered into by the Iowa Oil Company, which I w ask to have marked for identification.

(The agreement referred to was thereupon marked by the repor "Williams' Exhibit No. 1 for Identification.")

Q. (By Mr. ZECHIEL.) That is the agreement under which you a operating at the present time?

A. Yes, sir.

Q. Is that agreement in force with all the stations with which y had these prior agreements to which you have referred?

A. We had four stations put in since we changed this over l summer. We were only operating, I think, five stations on the agreement.

Q. Your statement a while ago as to the number of leased a loaned tanks you have out now included those with whom you h this agreement also?

A. Yes, sir.

Q. At what time did you start using this form of contract?

A. Early in the spring; I cannot tell you just when.

Q. What was the occasion of your change from the use of prior contract to this one——

146 Commissioner THOMPSON. When you are speaking of "t one," what do you mean? Marked exhibit what?

Mr. ZECHIEL. Williams' Exhibit 1, for identification.

Commissioner THOMPSON. Let us refer to it as "Williams' Exhi No. 1" each time.

The WITNESS. The object in getting this agreement was to h them all uniform. We had two stations at a little out-of-the-w place in the hands of people that felt they could not afford to t this on solely on a free basis.

Q. (By Mr. ZECHIEL.) What do you mean by a free basis?

A. No expense connected with the installing of the pump or ke ing it in repair.

Q. (By Mr. BURDEAU.) I would like to ask you whether or that contract differs from your previous contract in any way exc in the last paragraph?

A. Yes, sir. The original agreement stated that we were to h the exclusive sale of the gasolene during the life of the contract.

Q. That now is changed in the last paragraph of Williams' hibit 1?

A. This one says they have a right——

Q. They can put in some other equipment?

A. Yes, sir; they have that right.

Q. I ask in what other respect does Williams' Exhibit 1 di from your former contract?

A. The former one I do not have. This last clause——

Q. That is the only difference?

A. And the consideration of one dollar a month.

Commissioner THOMPSON. What is this last clause you speak of?

Mr. BURDEAU. The last clause is this:

"It is further agreed that ------ [meaning the dealer] have the privilege of installing outfits of like nature of another oil company for the purpose of handling their oils if so desired."

Q. (By Mr. BURDEAU.) That has been effective from what date?

A. That was along about the first of April.

Q. How did that change come to be brought about in your contract?

A. We have one station where the National Refining Company have a pump in, also, and we figured if they cared to
147 install this other equipment we had no right to say they could not.

Q. There was no benefit or advantage to you under such a contract, was there?

A. We have the reputation of handling quality gasolene, and our pumps are all equipped with our signs over them, and we do not want an inferior grade of gasolene put in them. That is one reason why we asked that they be not used for any other oil companys' products. These pumps are located in different parts of the city convenient to the trade that are patronizing us.

Q. (By Commissioner THOMPSON.) Do you consider it good merchandising to install a pump at a nominal price—as I understand it, that is what you do—and permit a competitor to also install a pump?

A. In some places that kind of an arrangement will work out all right. In others it would not. In the Dubuque territory there is nothing but hills. The people living away back on the hills, if they have to go down on the level to get their supplies, I think in that case it would be all right. Where the drive-in stations are handy I think it is all wrong. We have pumps located out at the outskirts of the city, and it is a very inconvenient matter for the people to go down town to get their supplies. Generally those pumps are placed in some little store that is not financially able to get this equipment.

Q. These pumps cost you approximately four hundred dollars?

A. They run in the neighborhood of about three hundred dollars.

Q. Would it pay you to put in an investment at a nominal sum of three hundred dollars, with the purchaser at the same time putting in the pump of a competitor?

A. Well, no. The idea is here: If they wanted the competitor's line of merchandise they would probably make application to put their equipment in. This business has not been solicited by the Iowa Oil Company itself, personally; this business has come to us with a request to place these stations at these different points as a matter of convenience to the trade.

The ACTING CHAIRMAN. I wish you would get Mr. Williams to explain to me, because my mind does not follow it, just what is the

difference between the hill proposition and a valley proposition in this case.

148 The WITNESS. If you are living a mile and a half or two miles away, amongst the hills and the only source of supply you had for your gasolene was driving down town to get it, it would be very convenient to you to go to a little curb station upon the hill some place and get your supply.

Q. (By the ACTING CHAIRMAN.) Correct. I can see that; but just why would that warrant the installation of two pumps on the hill at a given place as against two pumps in the valley? I do not get that.

A. The idea is this: If you had a certain line of trade that was demanding your merchandise, it would not make any difference if there were half a dozen pumps up there; you would get the business.

Q. I am beginning to see.

A. Our trade is a trade that is asking for a little higher grade of merchandise than some of our competitors are delivering.

Q. (By Commissioner THOMPSON.) So, when you put in a pump as against a pump of a competitor, your hope of getting business is because you put in a better class of merchandise?

A. We have always handled a better class of merchandise. Our reputation along that line has brought these requests to place these different pumps, what few we have got, in these different locations.

Q. (By the ACTING CHAIRMAN.) Do you handle lubricating oil?

A. Yes, sir.

Q. Is there a greater margin of profit on lubricating oil than on gasolene?

A. The little we get comes unsolicited so far as the general run of business is concerned. There are a lot of garages to which we are selling gasolene that do not handle our lubricating oils.

Q. (By Commissioner THOMPSON.) In how many instances where you have a pump installed with a purchaser has a competitor a pump installed?

A. We have one garage.

Q. Only one out of how many pumps did you say you had installed?

A. We had twelve.

Q. (By the ACTING COMMISSIONER.) Is this garage on a hill?

A. No, sir; it is a downtown outfit.

Q. (By Mr. BURDEAU.) Whose outfit was in there first?

149 A. They were both put in the same time—one, the National Refining Company.

Q. Was that a new station?

A. Yes, sir.

Q. And the arrangement was made with your company at about the same time that the garage man made his arrangement with the other company?

A. The pumps went in at the same time. When they built the building they put them both in.

Q. (By Commissioner THOMPSON.) In Dubuque have you two places on the hill where they have two pumps installed?

A. Not that I know of. Another oil company has a pump up there at one place.

Q. What is the name of that company?

A. The Leader Oil Company has a pump station on the hill.

Q. Is there any other competitor's pump at the same place?

A. No, sir.

Q. (By Mr. ZECHIEL.) Did you ever succeed in taking business away from a competitor by the installation of one of these pumps under tying contracts?

A. Not that I know of.

Q. Have you ever refused to put in a pump under one of these contracts where a garage man or retailer asked you to install such a pump?

A. Yes, I have, on account of people located out—I figured that they would not be there only a month or six weeks and would be looking for another location; or if it was too close to another pump that we might have installed. Our object was to divide up the territory so that our trade could get convenient service. I could have put in a hundred if I had wanted, but we stayed away from as far as we could, just merely to give the service to those we had installed.

Q. Did you lose the business of those companies?

A. Certainly.

Mr. ZECHIEL. That is all.

Commissioner THOMPSON. Is there any cross-examination?

(No response.)

The ACTING CHAIRMAN. I would like to ask Mr. Williams just this question, because I am interested personally in the subject.

Q. (By the ACTING CHAIRMAN.) Is the Iowa Company a very old company?

A. It is about thirteen years old. I do not know just how old they are. I have been there for five years with them. I think it was 1913 they started. It originally was the Keith City Oil Company, a little local institution.

Q. Are there refineries in Iowa anywhere?

A. Not that I know of.

Q. The reason I asked that is that some years ago I saw, along a railroad track in Iowa, a small number of tanks with the name of an oil company on them and it said this was the first oil company in Iowa. It did not look very prosperous to me, and I wondered what its history was. I thought maybe yours was an outgrowth of that company.

A. No, sir. The company started there, I think, along about 1912, when a few of the business men got together and started it to sell to launch owners and one thing and another who wanted to get a little better grade of merchandise than was being delivered there.

Q. Petroleum has never been found in the State of Iowa, has it
A. Not in any large quantities, I do not think.
Q. Shipments come from where?
A. Oklahoma, mostly.
Q. The Wyoming field does not supply you?
A. No, sir.
(Witness excused.)

L. B. HANCOCK was called as a witness by and on behalf of t Federal Trade Commission, and, being first duly sworn, testified follows:

Direct examination:

Q. (By Mr. ZECHIEL.) With what company are you connected?
A. Pure Oil Company.
Q. Where is that located?
A. Minneapolis.
Q. Where is the general geographical territory over which t Pure Oil Company does business?
A. The Northwestern States, in Minnesota, Wisconsin, So Dakota, North Dakota, Montana, Wyoming, Idaho, and Wa ington.

151 Q. Your headquarters are where?
A. Minneapolis.

Q. Do you ship gasolene and other oil products from the city Minneapolis to various parts of those States?
A. We do not ship it from Minneapolis—we ship some fr Minneapolis.
Q. Do you ship gasolene and oil products from one State another in the course of your business?
A. Yes, sir.
Q. How long have you been with the Pure Oil Company?
A. Fifteen years.
Q. Had you had any experience in the gasolene business and business generally, prior to that time?
A. About eight years.
Q. What capacity were you with the Pure Oil Company dur your connection with that company?
A. I have been managing the company all the time.
Q. Does your company buy and sell or lease and loan oil tan and pumps in connection with its business?
A. We buy and sell and lease a few.
Q. You say you lease a few. Do you mean you lease a few und tying contracts for a nominal consideration?
A. We have a few of that kind—four, to be exact.
Q. Where do you buy your oil tanks and pumps?
A. We buy them from several pump companies—the Western Tank & Pump Company——

Q. Located where?
A. At St. Louis; and the Wayne Oil Tank & Pump Company.
Q. Fort Wayne, Indiana?
A. No; I think they are at Indianapolis. I am not certain just here they are located.
Q. They are an Indiana corporation?
A. I think so.
Q. From any other companies?
A. We have bought from other companies—the Milwaukee Oil ank & Pump Company.
Q. Do you buy these pumps and tanks in carload lots?
A. No, sir.
Q. You buy them in individual shipments?
A. Yes, sir.
Q. Do you have the outfits shipped from the factories direct to e customer to whom you lease, loan, or sell?
A. To those we sell to we have them shipped direct to the customer. Where we lease them, we have them shipped directly to ourselves.
Q. Where you have them shipped to yourself, do you have a par-ular pump ordered by a particular customer?
A. No, not necessarily. I think in this case, in the four instances, e have ordered them for a special purpose.
Q. You use them for the purpose for which they were ordered?
A. Yes, sir.
Q. Those pumps were all shipped from outside of the State to eir final destination?
A. Yes.
Q. Who are your competitors, generally?
A. We have, in the cities of Minneapolis and St. Paul, about fteen competitors, and over the territory perhaps as many more.
Q. Is the Sinclair Company one of your competitors?
A. Yes, sir.
Q. The Bartles Oil Company?
A. Yes, sir.
Q. Where is the Bartles Oil Company's headquarters?
A. St. Paul.
Q. Does the Iowa Oil Company sell in your territory?
A. Not that I know of.
Q. You do not sell in the State of Missouri, do you?
A. No, sir.
Q. In your experience in the gasolene business have you come in ntact with the individual garages and other retailers?
A. Not personally.
Q. You have been about over the country in your territory, ough, and have seen many of these garages and retail places?
A. Yes, sir.

Q. What is your experience whether or not the garages or oth retail places have more than one pump and tank installed?

A. I do not know of any instance where they have more th one pump, in our whole territory.

Q. Have you ever refused to lease and loan pumps under the contracts for a nominal consideration, tying contracts, to custom who requested them?

A. Yes, we have.

153 Q. What was the result of your refusal to lease the pump

A. The party that will do it will get the business.

Q. You lost the business of that company?

A. Yes, sir.

The ACTING CHAIRMAN. Mr. Zechiel, just as an economic prop sition, I would like to know from Mr. Hancock what determines h company to give a pump to one man and not to give it to another ma

The WITNESS. I presume, the prospects for the amount of busine Some customer or some garage might not be so located that the business would seem sufficient.

Q. (By the ACTING CHAIRMAN.) Unquestionably you have a gre many more men apply to be given a pump than you can accommoda

A. Yes; that has been true.

Q. You looked over the location, took into consideration the tra along that street, before you gave the pump?

A. Yes, naturally.

Q. When you were figuring on the volume of sales, what were y mentally doing in the way of accounting——

A. The position of our company has been this, that we did not co mence to put in these pumps until we found we were losing so mu business to our competitors that we were simply forced to do it. W do not make a practice of putting in pumps at any time. We did n until we saw that our competitors were getting our business aw from us.

Q. (By Commissioner THOMPSON.) Do you believe it is good me chandising?

A. No, sir; we do not. We do not consider it so.

Q. Why do you not?

A. Because you are giving a man something for nothing; and the are other considerations, of course.

Q. (By the ACTING CHAIRMAN.) It did not appeal to you when y had to go into it?

A. No, sir; it did not.

Q. (By Commissioner THOMPSON.) Would you like to see the pra tice stopped?

A. We would.

Q. Universally?

A. Yes, sir.

154 Q. (By the ACTING CHAIRMAN.) What is your experien with the sale of lubricating oils in connection with gasoline the way of margin of profit?

A. Oh, the margin of profit is considerably greater in the lubricating oils.

Q. That is, if you eliminated the sale of lubricating oils in connection with gasolene at gasolene stations or pumps, the gasolene would go up in price, would it not?

A. I do not think so.

Q. That is, if it were economically a part of the operation of the station or the pump?

A. You are speaking now of a garage pump, filling station, or just what?

Q. I would say a garage pump. However, my real question is this: If you have a filling station—and I suppose you have filling stations?

A. Yes, sir.

Q. Does your sale of lubricating oil bring in a profit that carries your filling station expense as against the sale of gasolene? It is on a closer margin?

A. It assists, but it does not carry the expense?

Q. (By Commissioner THOMPSON.) You have had filling stations in Minneapolis for quite a long while?

A. Yes, sir.

Q. How did it work out as against the pump? Is it driving the pump out of business, or just simply limiting it?

A. I can give you the number of each, if you like.

Q. What is your approximate judgment on the matter?

A. I do not see that it makes very much difference. We find almost every garage with a pump, particularly when they are put in free.

Q. Will not the garage have to keep the pump if it wants to keep its business? In other words, is not that a thing that the man who saves his automobile with the garage company will want in the way of service, and insist on?

A. Yes; I think so.

Q. (By the ACTING CHAIRMAN.) Mr. Hancock, was there a stage in this pump business in which it became a kind of mania, that everybody was putting in pumps?

A. I think that has been true in the last two years.

Q. Has there ever been a time during that period in which you said to yourself, "There are too many pumps"? Of course, I know you have to be more or less altruistic to say that.

A. When we have a lot of filling stations we are apt to say that. I did not want to make that remark in just that way.

Q. What I have in mind is this: When a new type comes out, in its initial stages there is a propaganda to push its sale, and that multiplies the numbers used beyond any reasonable needs of society; and a business man in your line would study that.

A. That would be true if the business remained constant, but with the ever-increasing demand for gasolene there is not too much equipment, I do not think, for the distribution of it.

Q. So you say it did not reach that stage; your answer would be no?

A. I think so.

Q. (By Mr. ZECHIEL.) It has been asserted a number of times that the leasing of oil pumps and tanks in the manner in which a number of companies have leased them for a nominal consideration under tying contracts, was necessary in order to prevent fraud on the public in the use of these tanks for storing and retailing gasolene of an inferior quality compared with that of the company which leased or loaned the pump. Is that necessarily true, or might there be some other means of identifying the gasolene which comes from one of these pumps and tanks, even though the garage man owned his own pump or it were leased or loaned under condition that anybody could use the pump?

A. I do not believe that there would be very much foundation for such a conclusion, because it is as much to the garage man's interest to handle good gasolene as it is to have a pump.

Q. Would it be feasible in your opinion for electric light signs or bulbs, for instance, that frequently occur on the top of the pump to designate the product that is being sold from any particular pump outfit?

A. Would it be necessary, you say?

Q. I say, would it be feasible to use that as a way of designating the kind of gasolene that is being distributed from that pump?

A. I think it is customary in our business.

Q. It is not necessary, therefore, to actually lease or loan a pump for a nominal consideration under a tying contract in order to designate whose gasolene is being sold from the pump?

156 A. I do not consider it so.

Mr. ZECHIEL. I guess that is all.

Commissioner THOMPSON. Is there any cross-examination?

Mr. OSBORN. I would like to ask a question or two.

Cross-examination:

Q. (By Mr. OSBORN.) Is it your experience that if dealers and garage men and others use their own equipment and a customer drives up and calls for any particular kind of gasolene, the dealer always has that particular kind that he calls for, no matter what kind he calls for?

A. Perhaps if he did not have a sign, if he was unscrupulous, he might do that. I know I have personally gone to pumps and asked what kind of gasolene was being sold, and was told.

Q. In your experience with your company—the Pure Oil Company, you said?

A. Yes.

Q. (Continuing.) Have you ever figured or considered that having your own equipment in there with the condition in the contract that the dealer should not handle any product through that equipment but yours, afforded you and your customers any protection?

A. I do not quite get your thought in the matter.

(By request, the reporter read the pending question as above recorded.)

Q. (By Mr. OSBORN.) I might add this—any protection that the customer would get your gasolene?

A. I might answer that in this way, that we sell gasolene of a certain brand to a number of garage customers who own their own pumps. We put up a sign to indicate that they are selling that particular brand and grade of gasolene. Does that answer your question?

Q. No, not really.

The ACTING CHAIRMAN. No, that does not.

Q. (By Mr. OSBORN.) Maybe I can make myself clear in another way.

It is my understanding from your statement that in your contract there is a condition that when you loan a dealer equipment you place in your contract a condition that he shall not handle in that equipment any gasolene but yours.

A. We do not have a contract, but it is generally understood that when we furnish a pump the customer will buy from us, and that does afford some certainty that you are going to sell that customer, particularly if you do have a contract.

Q. You want to do that with the public, do you not—assure them that they will get your commodity if they ask for it?

A. We have not had any occasion to use that means for giving our customers what they want.

Q. I understood you to say in your direct examination that when a dealer applied to your company for the loan of equipment you made some investigation as to the amount of his business before you would consent to loan him any equipment. Have you made any calculation as to the amount of gallonage or quantity of his output that he must handle before you loan him equipment?

A. I do not think we have.

Q. How many gallons per month?

A. We have only about four pumps of this kind on a leasing proposition. We have made no calculation as to the quantity.

Mr. OSBORN. I believe that is all.

Mr. ZECHIEL. That is all.

(Witness excused.)

J. M. WELCH was called as a witness by and on behalf of the Federal Trade Commission, and, being first duly sworn, testified as follows:

Direct examination:

Q. (By Mr. ZECHIEL.) Mr. Welch, with what company are you associated?

A. The Illinois Oil Company of Rock Island.

Q. Where is the headquarters of this company—Rock Island?

A. Rock Island, Illinois.

Q. Over what territory generally, geographically, by States, does your company do business?

A. Minnesota, Wisconsin, Iowa, Illinois, Missouri, Kentucky, Tennessee, and Oklahoma.

Q. You sell gasolene at wholesale through all this territory?

158 A. Wholesale and retail.

Q. And you ship it back and forth across the States in the course of your business?

A. Yes, sir.

Q. Do you also deal in gasolene pumps and tanks in connection with your business?

A. Yes, sir.

Q. Do you sell them or lease them and loan them, or both?

A. No; we sell them.

Q. You do not do any leasing or loaning?

A. No; no leasing or loaning.

Q. Do you sell these pumps and tanks throughout all this territory, generally.

A. Yes, sir.

Q. Where do you get your pumps; from whom do you purchase them?

A. The last two years, from the Pennsylvania people at Lancaster, Pennsylvania?

Q. Is that the Guarantee Liquid Measuring Company?

A. No, sir. We are handling some of those now. Our big pumps are from the Pennsylvania concern.

Q. The Guarantee Visible Measure?

A. No, sir.

Q. They are located in Lancaster, Pennsylvania?

A. Lancaster, Pennsylvania; yes, sir. I forget the name.

Q. Do you buy these outfits in carload lots from the company?

A. Yes, sir.

Q. And have them sent where?

A. To Rock Island, Illinois—not in every case. We ship both direct from the Pennsylvania factory to our headquarters in Kentucky or in Oklahoma, but as a rule the bulk of the shipments come to Rock Island, Illinois.

Q. Do you have any individual pumps shipped from the factory to any particular place?

A. Yes; we do.

Q. On occasions where you have individual equipment shipped out, do you have them billed directly to the purchaser?

A. No; they are billed to us and we reinvoice them.

Q. Where you have them shipped to you in individual numbers they are at those times purchased for a particular customer, are they?

159 A. No. We purchase them for stock. Whenever the stock runs low we order another carload of pumps.

Q. You never order for individual customers?

A. Oh, yes. We make a direct shipment to that customer.

Q. When you have them shipped to you in carload lots do you store them in your own warehouse?

A. Yes, sir.

Q. And from there you send them out to the customers?

A. Yes, sir.

Q. Do you send them out in the same package in which you received them from the manufacturing concern?

A. Yes, sir.

Q. How long have you been connected with the Illinois Oil Company?

A. Eleven years.

Q. Had you any experience in the oil industry generally prior to that time?

A. Three years.

Q. During the course of your experience have you had occasion to meet the retailers of gasolene products?

A. Yes, sir.

Q. Is that true generally throughout the country in which you are now selling gasolene?

A. Yes, sir.

Q. What has been your experience whether or not retailers of gasolene generally have on their premises one outfit only through which they sell their gasolene, or more?

A. Well, generally more, I think now. The big dealers would have two or three pumps. Of course there are lots of gasolene sold from in front of a little grocery store or blacksmith shop or a little store, where the demand is limited, and one pump is all you will find there, but with the big garages and distributing stations you will find two or three pumps.

Q. Where you find two or three pumps in one garage, are they the pumps furnished by one company or several companies?

A. In lots of cases the dealers himself owns his pumps. He is handling two or three different kinds of gasolene.

Q. Owns his own pumps?

A. Owns his own pumps. It is the small man that has a limited amount of sales that has an inducement to have a pump in free to him.

160 Q. Do you know whether or not these larger garages that you speak of have oil tanks and pumps that have been leased or loaned to them?

A. Some have.

Q. In those cases where they have been leased and loaned to larger garages what is your experience whether or not various oil companies have leased or loaned those pumps or only one oil company has leased or loaned the pump to any particular garage?

A. Well, in most cases there will be two different companies having pumps, if it is a good big garage. You are generally assured by

the dealer that he would not tie himself up exclusively with anybody. If one concern put a pump in for him free he would, in most cases, handle that firm's gasolene through that pump, but he would not tie himself up not to put in another man's pump and handle his gasolene also. If the demand was great enough he would put in one or more pumps of other concerns on the same basis.

Q. (By Commissioner Thompson.) Where he would put in one or more pumps of different competitors would he sell the oil of one competitor and carry it through another competitor's pump?

A. No; as a rule—you are speaking of the leased pump or given away or loaned pump proposition now?

Q. Yes.

A. No; in the most cases they deal fairly, that we have a contract with. Of course, in the last couple of years there were times in every town when this oil company or that oil company was out of gasolene, during the busy season, three or four or five days, and unable to take care of the trade. The other competitor may have gasolene; and in cases of that kind the dealer would put somebody else's gas through the other fellow's pump.

Q. That is an unusual situation, though?

A. Yes, sir. In ordinary cases he would deal fairly with the man that loaned him the pump. He would handle his gasolene exclusively through that pump.

Q. (By Mr. Zechiel.) It is not a common thing, though, is it, Mr. Welch, for one garage to be handling gasolene through sets of leased pumps?

A. I do not think it ever got to be a very common thing. With the big gasoline trade over the country the most of the pumps have a nominal figure and it never got to be very bad.

161 Q. I mean, if one particular oil company leased a pump to a particular garage man, it is not common for that same garage man to have another pump leased from another oil company, is it?

A. It is if his business justifies it: that is, where the trade is big enough, where his business is big enough.

Q. (By Commissioner Colver.) Do you know of such instances?

A. Oh, yes, sir.

Q. Can you name them?

A. More so in the past than at the present time. At the present time the filling station proposition is taking all the business away from the garages.

Q. Can you name one?

A. The Totten Auto Company in our town used to have two pumps there.

Q. Have they now?

A. They quit handling gasolene on account of the filling stations.

Q. Do you know of any other instance?

A. The Tri-State Auto and Supply Company have two pumps.

Q. Now?

A. Yes, sir.

Q. (By Commissioner THOMPSON.) Are they the pumps of competitors?

A. One is their own and one belongs to the oil company—no; they are both owned, now.

Q. (By Commissioner COLVER.) We are talking of two pumps supplied under contract or loaned by two competing companies.

A. I do not know that I can name the firms now.

Q. You do not know of any instance?

A. It seems to me in the last couple of years the gasolene business got so small on account of the filling stations——

Q. (By Commissioner THOMPSON.) Do you know of any in Rock Island?

A. I do not think I do at the present time.

Q. (By Commissioner COLVER.) Then do you want to change your answer where you said you knew of any such cases?

A. I did in the past. I know a number of garages now that have two pumps and are not using either one of them.

Q. Pumps of competing companies?

A. Yes, sir.

Q. What was the name of the concern?

A. The Totten Auto Company had the Standard Oil Company's pump and the Iowa Oil Company's pump.

Q. (By Commissioner THOMPSON.) In Rock Island?

A. Yes, sir. Now, I know neither one of the pumps is in use.

Q. (By Commissioner COLVER.) When was that?

A. Four or five or six years ago, when the garages were selling all the gasolene sold.

Q. (By Commissioner THOMPSON.) What is the town across the river?

A. Davenport.

Q. Do you know of any instances in Davenport?

A. No, sir. It is the same over there. There are half a dozen more filling stations and garages that formerly handled gasolene that do not handle it any more.

Q. So you do not know of any merchant or garage in Davenport or Rock Island where they are using pumps of two competitors?

A. Not at the present time I do not; no, sir.

Q. (By Mr. ZECHIEL.) As a matter of fact, at the present time, Mr. Welch, you do not know of cases where two different oil companies are leasing or loaning for a nominal consideration pumps to one garage?

A. No, sir.

Q. You do not know of any cases like that now?

A. No, sir; I do not know of a case.

Q. (By Commissioner THOMPSON.) Do you consider it good merchandising to loan a pump at a nominal consideration to a company in consideration for their selling gasolene for you?

A. Yes, sir; I do.

Q. You think it is good merchandising?

A. I think it was good merchandising in the days it was in its bloom; in the days when it was universally followed.

Q. Do you consider it so now?

A. Now, I do not, because it is unprofitable on account of the filling stations.

Q. (By Mr. BURDEAU.) Is that your personal opinion, or the policy of your company?

A. No, sir; it is my personal opinion. Our company never made it a policy.

Q. Your company is actually opposed to that principle of doing business, is it not?

A. We never depended or had to depend on garages and
163 stores for business. We were running our business on different lines than depending on the dealer and the garage for its outlet of our products.

Q. It is not a fact that your company has signified to a representative of the commission that it was opposed to that principle of doing business?

A. We did as a firm, but as a general practice I do not think it was detrimental to the community. It is safer to handle gasolene. These little dealers could not afford to buy the equipment themselves and if some big oil company or a number of companies could get a pump and make it safe to handle the gasolene that way, I think it was a good thing.

Q. (By Mr. ZECHIEL.) You testified that they could not afford to handle it themselves?

A. Could not afford to handle a pump.

Q. Could the oil company afford to put in a pump for a little dealer at a loss?

A. If they got a nominal rental of a dollar a month, that would pay at least five per cent interest on the investment.

Q. But in many cases they did not get any rental at all.

A. It probably was as cheap a way of getting and holding customers as any other way.

Q. Must it not have been a fact that the oil companies must have made money out of these pumps for these little fellows?

A. They did, I think.

Q. If they made a profit, could not the little man have afforded to have bought his own pump and made a profit?

A. No; the average dealer in these small towns and grocery stores and little garages—the investment would be too great for them.

Q. You testified, I believe, that your business is very largely or almost exclusively with the little fellow?

A. Almost exclusively direct to the consumer.

Q. You do not deal with the grocerymen and that class of people?

A. To just a limited extent.

Q. Did you ever sell your equipment to that class of people?

A. Well, we have sold lots of equipment; yes.

Q. Then it is a fact that these little fellows can afford to buy your equipment?

A. A certain percentage of them can, but there are lots of them that cannot afford it.

364 Q. You found a great many of these people that you testified to be little fellows who were perfectly able to buy this equipment from you?

A. Oh, yes.

Q. If you knew that the pump people themselves had been able to sell thousands of these pumps to numerous dealers that are not large garages, all over the country, would that affect your opinion about whether or not they are able to buy these pumps themselves or whether they must be furnished by somebody, gratis?

A. There were lots of pumps that were probably leased or given away to firms that could have afforded to buy them, but in a number of cases men put in pumps and handled gasolene that could not have afforded to have bought them outright. I do not know which way they would be the largest percentage.

Q. Do you think it is good business for an oil company to lease or loan a pump to one of these small retailers who does not have business enough to make it profitable?

A. In a great many cases I think it was good business.

Q. (By Mr. BURDEAU.) I understood you to convey the idea that you regarded the leasing of pumps purely as a device for getting and holding customers?

A. Yes.

Q. There is no other benefit or advantage to the oil company except the getting of and holding of customers?

A. That is the principle.

Q. (By Commissioner THOMPSON.) It would limit the competition, would it not, after you got the customer?

A. It would for the period of the contract.

Q. Do I understand that your company has ceased to give away equipment?

A. We never made a practice of it.

Q. When you sell it, do you sell it at a profit?

A. We sell them at a fair margin of profit over their actual cost to us.

Q. (By Mr. ZECHIEL.) Have you ever tried to sell gasolene to one of these numerous smaller dealers who have leased or loaned pumps?

A. Oh, evidently we have; yes.

Q. You were not able to sell them gasolene?

A. Not where they had a leased or loaned pump and a contract with another concern.

365 Q. Did you ever lose a customer because some other oil company leased or loaned him a pump at a small rental?

A. I think we have. I would be safe in saying we had lost some.

Mr. ZECHIEL. That is all.

Commissioner THOMPSON. Is there any cross-examination?
(No response.
Witness excused.)

H. C. WURSTER was called as a witness by and on behalf of the Federal Trade Commission, and, being first duly sworn, testified as follows:

Direct examination:

Q. (By Mr. ZECHIEL.) What company are you associated with, Mr. Wurster?

A. With the Hawk Eye Oil Company of Waterloo.

Mr. OSBORN. Pardon me. Waterloo, Iowa?

The WITNESS. Yes, sir.

Q. (By Mr. ZECHIEL.) How long have you been associated with the Hawk Eye Oil Company?

A. About three years.

Q. What was your experience in the oil industry prior to that time, if any?

A. For seven years with the S. L. Collins Oil Company at Knoxville, Iowa.

Q. What is the general territorial extent of your company's business?

A. Northern Iowa and southern Minnesota.

Q. Just two States?

A. Two States; yes, sir.

Q. In the conduct of your business your company ships gasoline and other oil products back and forth across the various States in your community?

A. Yes, sir.

Q. Do you also deal in pumps in connection with your business?

A. Yes, sir.

Q. You buy and sell such pumps to your customers?

A. Yes, sir.

Q. When you buy and sell such pumps, do you sell them at a fair margin of profit?

166 A. A very fair margin of profit.

Q. Do you lease or loan such pumps to your customers?

A. No, sir.

Q. Where do you buy your pumps that you sell to your customers?

A. Bought from the Columbian Steel Tank Company of Kansas City and the Wayne Pump Company, Fort Wayne, Indiana.

Q. Do you buy them in carload lots or individual shipments?

A. Individual shipments.

Q. You buy none in carload lots?

A. No, sir.

Q. Are those pumps you buy from the manufacturing companies do you buy them for a particular customer?

A. No, sir.

Q. Do you ever have any pump sent from the factories to a particular customer?

A. We might on a direct order, or we would not have it in stock—a hurry up order, or something like that.

Q. It is your impression, then, that you have at times pumps sent directly to customers?

A. Yes, sir.

Q. Those you have billed to you, do you send them out and deliver them to customers in the same packages in which they were brought into the State?

A. Yes, sir.

Q. During the time you have been connected generally in the gasolene and oil business, have you had occasion to come into more or less personal contact with the various retailers of gasolene in your territory?

A. Yes, sir.

Q. In your experience, do the retailers as a general practice have more than one oil pump and tank outfit installed?

A. I do not think they do as a rule have more than one.

Q. It is your impression, then, that there are very few garages and other retailers who have more than one such outfit?

A. Very few.

Q. During the conduct of your business has your company ever lost any business because it refused to lease or loan pumps?

1267 A. I would say we have.

Q. You testify from personal knowledge, now?

A. Yes, sir.

Q. Have any of your customers or prospective customers ever asked you for the lease or loan of one of these pumps?

A. Several.

Q. You refused to lease them or loan them?

A. Yes, sir.

Q. Did you lose such customers?

A. Yes. I would say not in all cases.

Q. In many cases?

A. In many cases: yes, sir.

Q. Do you believe it to be a good business practice to lease or loan pumps under a nominal consideration in tying contracts?

A. I do not think it is a good policy: no.

Mr. ZECHIEL. That is all.

Q. (By the ACTING CHAIRMAN.) Why do you not consider it good merchandising?

A. The question comes up where you have to buy your business in that way. I do not think it is good salesmanship. It lets the bars down, and practically there is no limit as to how many pumps you put out. I might add to that that if there could any limit be made as to garages doing a large volume of business in order to protect the independents or the smaller companies against filling stations.

it would be all right; but it is hard to draw a line and consequently I think it is simply poor merchandising all the way through.

The ACTING CHAIRMAN. Is there any cross-examination?

(No response.)

(Witness excused.)

Mr. ZECHIEL. There are no more witnesses. The Bartles Oil Company told me this morning through their attorney that Mr. Merritt would be here, but he is not here. There is an understanding that we are to agree, however, on the stipulation of the facts with the Bartles Oil Company so far as their practice is concerned, their jurisdiction, and that the evidence taken here in this case will go to the economic situation.

Commissioner THOMPSON. The commission's jurisdiction?

Mr. ZECHIEL. Yes, sir; and the evidence taken on the economic situation generally is to be considered as evidence in the case against the Bartles Oil Company.

That concludes the evidence on behalf of the commission,
165 with the exception of the Oklahoma Producing and Refining Corporation of America, for whom I ask a continuance for a later hearing in that territory.

Commissioner THOMPSON. Are we now ready to hear the evidence of respondents in answer to the evidence of the commission?

Mr. ZECHIEL. We are.

Commissioner THOMPSON. Does the Sinclair Company wish now to introduce any evidence?

Mr. OSBORN. Will you give me just a moment to consult?

Commissioner THOMPSON. Yes. Does any other respondent wish to introduce any evidence at this time?

(No response.)

Mr. OSBORN (after consultation). I think we have no testimony to offer.

Mr. ZECHIEL. I desire to offer in evidence a telegram dated Dubuque, Iowa, September 24, 1919, addressed to the Federal Trade Commission, Huston Thompson, commissioner, Washington, D. C., and signed by W. E. Williams for the Iowa Oil Company.

(The telegram referred to was received in evidence, marked "Commission's Exhibit No. 2.")

I also offer in evidence acknowledgment of receipt of notice of taking of testimony, dated the 10th of September, 1919, addressed to H. G. Whelan, attorney for the C. L. Smith Oil & Gasolene Company, and signed by H. G. Whelan.

(The acknowledgment referred to was received in evidence, marked "Commission's Exhibit No. 3.")

I also offer in evidence acknowledgment of receipt of notice of the taking of testimony, addressed to White and Case, attorneys for the Oklahoma Producing and Refining Corporation of America, signed by White and Case.

(The acknowledgment referred to was received in evidence, marked "Commission's Exhibit No. 4."

Whereupon, at 12.30 o'clock p. m., the commission adjourned subject to notice.)

Federal Trade Commission. Docket No. 334. Section V. Copy of stipulation.

United States of America,
Before Federal Trade Commission, ss:

FEDERAL TRADE COMMISSION
vs.
SINCLAIR REFINING COMPANY. } Docket No. 334.

Stipulation.

Subject to the approval of the Federal Trade Commission, and for the purpose of this proceeding only, it is hereby agreed by the counsel for the commission and counsel for respondent, that this stipulation of facts, as to the facts herein stipulated, shall stand in lieu of testimony the same as though testified to by competent witnesses and if approved by the commission shall be and constitute evidence in the case; and it is further stipulated that on the pleadings and this stipulation as to the facts and upon any other evidence introduced, the Federal Trade Commission may proceed to make its findings and order, respondent to have opportunity for oral argument and presentation of written briefs under the direction of the commission.

PARAGRAPH ONE. That the respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maine, with its principal business office located at the city of Chicago, in the State of Illinois, and is now and has been engaged in the business of purchasing and selling refined oil and gasoline, hereinafter referred to as products, and is largely engaged in refining crude petroleum, and that it is now and has been since January 3, 1917, in connection with the aforementioned business, engaged in the leasing and loaning, but not in the manufacture, of oil pumps, storage tanks and containers and their equipments, hereinafter referred to as devices, in various States of the United States, but not in the District of Columbia, in competition with numerous other persons, firms, corporations, and copartnerships similarly engaged; that prior to the 25th day of January, 1917, the corporate name of respondent was the Cudahy Refining Company.

PARAGRAPH TWO. That the respondent, in the conduct of its business, as aforesaid, and as hereinafter more particularly described, extensively refines petroleum and its products and purchases refined oil and gasoline, all hereinafter referred to as "products," and also purchases oil pumps, storage tanks or containers, hereinafter referred to as "devices," the said devices being used to contain said products, the said products and devices then

being handled and stored in the various States of the United States and transported in interstate commerce; that the aforesaid products are sold and the aforesaid devices are leased or loaned by respondent to various persons, firms, corporations, and copartnerships; that in the conduct of its business of purchasing and selling such products and selling, leasing or loaning such devices, the same are constantly moved from one State to another by respondent, and there is conducted by respondent a constant current of trade in such products and devices between various States of the United States; that there are numerous competitors of respondent, who, in the conduct of their business in competition with respondent, purchase similar products and purchase and manufacture similar devices, the said devices being used to contain said products, the said products and devices then being handled and stored in the various States of the United States and transported in interstate commerce; that the aforesaid products are sold and the aforesaid devices sold, leased or loaned by such competitors of respondent to various persons, firms, corporations, and copartnership; that in the conduct of their business, as aforesaid, competitors of respondent constantly move such products and devices from one State to another and there is conducted by said competitors a constant current of trade in such products and devices between the various States of the United States; that respondent has conducted its said businesses in a similar manner to that above described since January 25, 1917.

PARAGRAPH THREE. That respondent now leases and loans and has for the period of its business existence, leased and loaned devices and equipments for storing and handling its products, and that the monetary considerations received by respondent do not represent reasonable returns upon the investment in such devices and equipments; and also that such leases and loans of said devices and equipments are made for monetary considerations below the cost of purchasing and vending the same, when the business of leasing or loaning said devices and equipments and the returns received thereon are considered separate and apart from the general business and sales policy of the respondent; that respondent's form of con-
171 tract with the users of such devices and equipments provides in substance that the devices and equipments shall be used for the sole purpose of storing and handling gasoline supplied by respondent, and *and* that the uniform contract used by respondent for leasing such devices and equipments is in form, tenor, and substance as follows:

"Sinclair Refining Company

"Equipment Contract.

"This agreement, made and entered into this _____ day of _____, 19__, between the Sinclair Refining Company of _____ party of the first part, _____ of the city of _____, State of _____ party of the second part, witnesseth:

"Whereas, party of the second part is now being supplied with gasoline by the party of the first part and desires to install on his premises situated at _____ the following equipment for the better storing and handling of such gasoline: _____

"Now, therefore, in consideration of the premises and of the sum of one dollar by the party of the second part to the party of the first part (the receipt of which is hereby acknowledged), the above named parties do hereby agree as follows:

"1. The above described equipment shall be used by party of the second part for the sole purpose of storing and handling the gasoline supplied by party of the first part.

"2. The party of the second part agrees, at his own cost, to maintain said equipment in good condition and repair so long as he shall continue to use same.

"3. The party of the second part agrees that he will not encumber or remove said equipment, or do or suffer to be done anything whereby said equipment or any part thereof may be seized, taken on execution, attached, destroyed or injured, or by which the title of the party of the first part thereto may in any way be altered, destroyed, or prejudiced.

"4. In the event party of the second part should at any time use said equipment for any other purpose than the storing and handling of gasoline supplied by the party of the first part, or should cease for _____ days to handle gasoline secured from the party of the first part the right or license of the party of the second part to said equipment shall at once terminate, and thereupon party of the first part shall have the right to enter upon said premises and remove said equipment and every part thereof.

"5. The party of the second part shall indemnify and save harmless the party of the first part of and from any liability for loss, damage, injury, or other casualty to persons or property caused or occasioned by any leakage, fire or explosion of gasoline stored in said tank or drawn through said pump.

"6. This agreement shall terminate forthwith upon the sale or other disposition of said premises by party of the second part, and in any event upon the expiration of _____ months from the date hereof; and in the event that by mutual consent said equipment remains in the possession of party of the second part at the expiration of said period, it is agreed that the same shall be used by party of the second part subject to all of the terms and conditions of this agreement, and such may be terminated at any time after the expiration of _____ months from the date hereof by the party of the first part giving ten days' notice to that effect. Upon the termination of this license by whatever means effected, the party of the first part shall have the right to enter upon said premises and remove the said equipment and each and every part therof; provided, however, that the party of the second part shall have the right and option at such time to purchase said equipment by paying therefor the sum of _____.

"This contract is executed in triplicate, and it is agreed that the contract held by the party of the first part is to be considered the original and to be the binding agreement in case the duplicate varies from it in any particular.

"In witness thereof, the parties hereto have caused this agreement to be executed the day and year first above written.

"SINCLAIR REFINING COMPANY,

"By ----------

"*Party of First Part.*

"----------

"*Party of Second Part.*

"----------"

173 That the average life of said contract is not less than six months and in many instances is more than one year; that the average cost to the respondent of furnishing and installing the equipments furnished to customers under the contract herein set forth is approximately $300; that in some instances only the tank is furnished the customers; that in some instances only the pump is furnished, but that in the majority of cases both tank and pump with their equipments are furnished under the contracts aforesaid; that the respondent in the conduct of its business as aforesaid sells and distributes refined oil and gasoline in eighteen States of the United States as follows: Arkansas, Colorado, Connecticut, Illinois, Indiana, Iowa, Kansas, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New York, New Mexico, Ohio, Oklahoma, Rhode Island, and South Dakota; and that in each of said States, except Arkansas and New Mexico, the respondent leases and distributes the pumps, tanks, and devices, aforesaid, under the form of contract set forth herein; that the aggregate number of such contracts covering either pumps or tanks or both pumps and tanks, in force and effect of the time of this stipulation, in 459. That the respondent has invested in devices furnished to customers under the terms of the contract herein set forth approximately $127,000, exclusive of the cost of installation. With respect to the matters and things referred to in Sub-division E of Paragraph 4 of respondent's answer to the first count of the complaint herein, respondent rests upon the statements, averments, and denials of said Sub-division E of said Paragraph 4.

(Signed) ROY T. OSBORN,
Attorney for Respondent.

(Signed) CLAUDE R. PORTER,
Chief Counsel for Federal Trade Commission.

Federal Trade Commission. Docket No. 334. Section VI. Copy of commission's report, containing findings as to the facts and conclusions. Dated October 14, 1919.

174 UNITED STATES OF AMERICA,
Before Federal Trade Commission, ss.

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 14th day of October, A. D. 1919.

FEDERAL TRADE COMMISSION
vs.
SINCLAIR REFINING COMPANY. } Docket No. 334.

Report, Findings, and Conclusions.

A complaint having been issued by the Federal Trade Commission in the above-entitled proceeding and the respondent therein named having filed its answer herein, and the attorneys for the respective parties in said cause having stipulated to submit, and having submitted to the commission, subject to its approval, an agreed statement of facts in said cause, which agreed statement was agreed should be taken in lieu of testimony as to those facts stipulated, and it having been agreed that as to other facts the evidence to be taken in a formal hearing was to become the evidence as to such other facts as were charged in the complaint herein or made a defense in the answer, and the commission having duly appointed a time and place for the taking of testimony, and the respondent having appeared by counsel at the time and place so designated, and the commission having duly heard evidence on behalf of the commission and respondent, and the respondent having filed a brief by its attorney, and the commission having given due consideration to the complaint and answer herein and the stipulation as to the facts and the evidence submitted by the commission and by the respondent and being fully advised in the premises, reports and finds as follows:

1. That the respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine, with its principal business office located at the city of Chicago, in the State of Illinois, and is now and has been engaged in the business of purchasing and selling refined oil and gasoline, hereinafter referred to as products, and is largely engaged in refining crude petroleum, and

175 that it is now and has been since January 25, 1917, in connection with the aforementioned business, engaged in the leasing and loaning, but not in the manufacture, of oil pumps, storage tanks, and containers and their equipment, hereinafter referred to as devices, in various States of the United States, but not in the District of Columbia, in competition with numerous other persons, firms, corporations, and copartnerships similarly engaged; that prior to the 25th day of January, 1917, the corporate name of respondent was the Cudahy Refining Company.

2. That the respondent, in the conduct of its business, as aforesaid, and as hereinafter more particularly described, extensively refines petroleum and its products and purchases refined oil and gasoline, all hereinafter referred to as "products," and also purchases all pumps, storage tanks, or containers, hereinafter referred to as "devices," the said devices being used to contain said products, the said products and devices then being handled and stored in the various States of the United States and transported in interstate commerce; that the aforesaid products are sold and the aforesaid devices are leased or loaned by respondent to various persons, firms, corporations, and copartnerships; that in the conduct of its business of purchasing and selling such products and selling, leasing, or loaning such devices, the same are constantly moved from one State to another by respondent and there is conducted by respondent a constant current of trade in such products and devices between various States of the United States; that there are numerous competitors of respondent, who, in the conduct of their business in competition with respondent, purchase similar products and purchase and manufacture similar devices, the said devices being used to contain said products, the said products and devices then being handled and stored in the various States of the United States and transported in interstate commerce; that the aforesaid products are sold and the aforesaid devices sold, leased, or loaned by such competitor of respondent to various persons, firms, corporations, and copartnerships, that in the conduct of their business, as aforesaid, competitors of respondent constantly move such products and devices from one State to another and there is conducted by said competitors a constant current of trade in such products and devices between the various States of the United States; that respondent has conducted its said businesses in a similar manner to that above described since January 25, 1917.

3. That respondent now leases and loans and has for the
176 period of its business existence, leased and loaned devices and equipment for storing and handling its products, and that the monetary considerations received by respondent do not represent reasonable returns upon the investment in such devices and equipment; and also that such leases and loans of said devices and equipment are made for monetary considerations below the cost of purchasing and vending the same, when the business of leasing or loaning said devices and equipment and the returns received thereon are considered separate and apart from the general business and sales policy of the respondent; that respondent's form of contract with the users of such devices and equipment provides in substance that the devices and equipment shall be used for the sole purpose of storing and handling gasoline supplied by respondent, and that the uniform contract used by respondent for leasing such devices and equipment is in form, tenor, and substance as follows:

"Sinclair Refining Company.

"Equipment Contract.

"This agreement, made and entered into this_____day of _____, 19__, between Sinclair Refining Company of _____, party of the first part, and _____ of the city of_____, State of _____, party of the second part, witnesseth:

"Whereas, party of the second part is now being supplied with gasoline by the party of the first part and desires to install on his premises situated at _____ the following equipment for the better storing and handling of such gasoline:_____

"Now, therefore, in consideration of the premises and of the sum of one dollar by the party of the second part to the party of the first part (the receipt of which is hereby acknowledged), the above named parties do hereby agree as follows:

"1. The above described equipment shall be used by party of the second part for the sole purpose of storing and handling the gasoline supplied by party of the first part.

"2. The party of the second part agrees, at his own cost, to maintain said equipment in good condition and repair so long as he shall continue to use same.

"3. The party of the second part agrees that he will not encumber or remove said equipment, or do or suffer to be done anything whereby said equipment or any part thereof may be seized, taken on execution, attached, destroyed or injured, or by which the title of the party of the first part thereto may in any way be altered, destroyed or prejudiced.

"4. In the event party of the second part should at any time use said equipment for any other purpose than the storing and handling of gasolene supplied by the party of the first part, or should cease for _____ days to handle gasolene secured from the party of the first part the right or license of the party of the second part to said equipment shall at once terminate, and thereupon party of the first part shall have the right to enter upon said premises and remove said equipment and every part thereof.

"5. The party of the second part shall indemnify and save harmless the party of the first part of and from any liability for loss, damage, injury, or other casualty to persons or property caused or occasioned by any leakage, fire, or explosion of gasolene stored in said tank or drawn through said pump.

"6. This agreement shall terminate forthwith upon the sale or other disposition of said promises by party of the second part, and in any event upon the expiration of _____ months from the date hereof; and in the event that by mutual consent said equipment remains in the possession of party of the second part at the expiration of said period, it is agreed that the same shall be used by party of the second part subject to all of the terms and conditions of this agreement, and such may be terminated at any time after the ex-

piration of _____ months from the date hereof by the party o
the first part giving ten days' notice to that effect. Upon the termi
nation of this license by whatever means effected, the party of th
first part shall have the right to enter upon said premises and re
move the said equipment and each and every part thereof: provide
however, that the party of the second part shall have the right an
option at such time to purchase said equipment by paying thereto
the sum of _____.

"This contract is executed in triplicate, and it is agreed that th
contract held by the party of the first part is to be con
178 sidered the original and to be the binding agreement in cas
the duplicate varies from it in any particular.

"In witness whereof, the parties hereto have caused this agree
ment to be executed the day and year first above written.

"SINCLAIR REFINING COMPANY,

"By _____

"*Party of First Part.*

"_____

"*Party of Second Part.*

"_____"

4. That the contracts mentioned in the preceding paragraph
also provide that such equipments shall be used by the lessee only fo
the purpose of holding and storing the respondent's petroleu
products; that a small proportion of such lessees handle simila
products of respondent's competitors; and that only a small pro
portion of such lessees as handle similar products of respondent
competitors require or use more than a single pump outfit in th
conduct of their said business; that the practice of leasing suc
devices requires a large capital investment; that many competitors o
respondent do not possess sufficient capital and are not able to pu
chase and lease devices as respondent does as aforesaid, partly b
reason of which such competitors have lost numerous customers t
respondent; that the effect of the practice of leasing by contra
such equipments, where such contracts contain the said provisio
restricting the use of the same to the storage and handling o
respondent's products as aforesaid, may be to substantially lesse
competition and tend to create for the respondent a monopoly in
the business of selling petroleum products.

Conclusions.

That the methods of competition and the business practices se
forth in the foregoing findings as to the facts are, under the cir
cumstances set forth therein, unfair methods of competition, in in
terstate commerce, in violation of the provisions of section 5 of
an act of Congress, approved September 26, 1914, entitled "An ac
to create a Federal Trade Commission, to define its powers an
duties, and for other purposes" and are in violation of section

of an act of Congress approved October 15, 1914, entitled "An
179 act to supplement existing laws against unlawful restraints and monopolies, and for other purposes."

[SEAL.] (Signed) VICTOR MURDOCK,
Acting Chairman.
HUSTON THOMPSON,
WILLIAM B. COLVER,
Commissioners.

Dated this 14th day of October, A. D. 1919.

Federal Trade Commission. Docket No. 334. Section VII. Copy of commission's order to cease and desist, dated October 14, 1919.

UNITED STATES OF AMERICA,
Before Federal Trade Commission, ss:

At a regular session of the Federal Trade Commission, held at its office in the city of Washington, D. C., on the 14th day of October, A. D. 1919.

FEDERAL TRADE COMMISSION,
v.
SINCLAIR REFINING COMPANY. } Docket No. 334.

Order to cease and desist.

A complaint having been issued by the Federal Trade Commission in the above-entitled proceeding and the respondent therein named having filed its answer herein, and the attorneys for the respective parties in said cause having stipulated to submit, and having submitted to the commission, subject to its approval, an agreed statement of facts in said cause which agreed statement was agreed should be taken in lieu of testimony as to those facts stipulated, and it having been agreed that as to other facts the evidence to be taken in a formal hearing was to become the evidence as to such other facts as were charged in the complaint herein or made a defense in the answer, and the commission having duly appointed a time and place for the taking of testimony, and the respondent having appeared by counsel at the time and place so designated, and the commission having
180 duly heard evidence on behalf of the commission and respondent, and the respondent having filed a brief by its attorney, and the commission having given due consideration to the complaint and answer herein and the stipulation as to the facts and the evidence submitted by the commission and by the respondent and being fully advised in the premises reports and finds as follows: That having made its report and findings as elsewhere set forth, and having concluded upon such report and findings that the respondent has been guilty of unfair methods of competition in interstate commerce in violation of section 5 of an act of Congress, approved September 26,

1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that the respondent has violated section 3 of an act of Congress, approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," which report, findings and conclusions are hereby referred to and made a part hereof:

Now, therefore, it is ordered, that respondent, Sinclair Refining Company, shall cease and desist from:

1. Directly or indirectly leasing pumps or tanks or both and their equipments for storing and handling petroleum products in the furtherance of its petroleum business, at a rental which will not yield to it a reasonable profit on the cost of the same after making due allowance for depreciation and other items usually considered when leasing property for the purpose of obtaining a reasonable profit therefrom, and from doing any matter or thing which would have the same unlawful effect as that resulting from the practice herein prohibited and by reason of which this order is made.

2. Entering into contracts or agreements with dealers of its petroleum products or from continuing to operate under any contract or agreement already entered into whereby such dealers agree or have an understanding that as a consideration for the leasing to them of such pumps and tanks and their equipments the same shall be used only for storing or handling the products of respondent, and from doing anything having the same unlawful effect as that resulting from the practice herein prohibited and by reason of which this order is made.

Provided, however, that as to such pumps and tanks and equipments as are now leased by respondent contrary to the orders
181 contained in paragraphs 1 and 2 herein, respondent shall have four months from the date hereof to enter into new contracts or agreements with respect to the same which shall not be incompatible with the spirit and intent of this order.

It is also ordered, under and by virtue of the authority conferred on the commission by paragraph B of section 6 of "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914, that the said Sinclair Refining Company, respondent, shall within 20 days after the expiration of the time allowed within which respondent shall have fully complied with the order to cease and desist, hereinabove set forth, report in writing to the Federal Trade Commission, fully setting forth the nature of the changes made in the conduct of its business with respect to the subject matter involved in the order to cease and desist, and shall be set forth in such report in complete detail the plan or plans adopted for the lease, loan, gift, or sale of any oil tanks and pumps for use in storing refined oil or gasoline, which plan or plans are in use or are proposed to be put in use, and also attach to such report any contracts used by the respondent in the conduct of such business.

Done at Washington, D. C., this 14th day of October, A. D., 1919.
By the Commission:
[SEAL.] (Signed) J. P. YODER,
Secretary.

Federal Trade Commission. Docket No. 334. Section VIII. Copy of respondent's motion for rehearing and review and to set aside order to cease and desist. (Dated February 11, 1920.)

182 UNITED STATES OF AMERICA.
Before Federal Trade Commission.

FEDERAL TRADE COMMISSION
v.
SINCLAIR REFINING COMPANY. } Docket No. 334.

Motion for rehearing and review and to set aside order to cease and desist.

Comes now the respondent, Sinclair Refining Company a Maine corporation, and for the following reasons and on the following grounds respectfully moves the Honorable the Federal Trade Commission as follows:

A. For a rehearing of said cause.
B. For a review of the order to cease and desist.
C. That the order to cease and desist be set aside.
And in support thereof respectfully shows:

Statement.

July 18, A. D. 1919, the commission caused a complaint to be issued against the respondent alleging in substance that the respondent's method and practice of leasing and loaning oil pumps and storage tanks or containers was in violation of section 5 of an act of Congress approved September 26, 1914, and section 3 of an act of Congress approved October 15, 1914. Within the time prescribed by the commission the respondent filed its answer to said complaint denying generally and specifically the allegations of the complaint charging violations of the sections of the statutes referred to. The case was heard by the commission in the City of Washington, D. C., on September 26, 27, and 29, 1919. Thereafter and on October 14, 1919, the commission issued an order to cease and desist directed to respondent wherein the commission made certain findings and conclusions, on which said order was based.

Respondent's reasons and grounds in support of motion.

1. The findings, conclusions and order of the commission are:
   (*a*) Not supported by the evidence.
   (*b*) Contrary to the evidence.
   (*c*) Contrary to law.

183 2. There is insufficient evidence to support the finding, and the commission erred in finding that in the handling of oil pumps and storage tanks or containers there is conducted by respondent a constant current of trade between various States of the United States and a transportation by respondent of said devices in interstate commerce.

3. It is immaterial to the issues of this cause, and it was error for the commission to find that respondent leases and loans and has leased and loaned devices and equipment for storing and handling its products at and for monetary considerations below the cost of purchasing and vending the same, when the business of leasing or loaning said devices and equipment and the return received thereon are considered separate and apart from the general business and sales policy of the respondent.

4. It is immaterial to the issues of this cause, and it was error for the commission to find:

(a) That respondent's form of contract set forth in said order provides that respondent's pumps, tanks or containers, and other equipment shall be used by the lessee only for the purpose of holding and storing respondent's petroleum products.

(b) That a small proportion of respondent's lessees handle similar products of respondent's competitors.

(c) That only a small proportion of such lessees as handle similar products of respondent's competitors require or use more than a single pump outfit in the conduct of their business.

(d) That the practice of leasing said devices requires a large capital investment.

(e) That many competitors of respondent do not possess sufficient capital and are not able to purchase or lease devices as respondent does, partly by reason of which such competitors have lost numerous customers to respondent.

5. There is insufficient evidence to support the finding, and the commission erred in finding that the effect of the practice of leasing by contract such equipment, where such contract contains a provision restricting the use of the same to the storage and handling of respondent's products, may be to substantially lessen competition and tend to create for the respondent a monopoly in the business of selling petroleum products.

6. There is insufficient evidence to support the commission's
184 finding and conclusion that the methods of competition and the business practices set forth in the commission's findings as to the facts are unfair methods of competition in interstate commerce; and the commission erred in finding that the same are unlawful.

7. The commission erred generally in making and issuing herein its order to cease and desist directed to the respondent, and it erred specifically in ordering respondent:

(a) To discontinue leasing pumps or tanks, or both, and their equipment for storing and handling petroleum products in the fur-

therance of respondent's petroleum business at a nominal rental, or at a rental that does not yield a monetary profit, when considered separate and apart from the general business and sales policy of respondent.

(b) To not enter into contracts or agreements, and to discontinue operating under any contract or agreement already entered into, whereby the lessees agree or have an understanding that the pumps and tanks and their equipment shall be used only for storing and handling of products of respondent.

8. The commission is without jurisdiction over the subject matter of said complaint and order.

9. The order of the commission is contrary to law, is inequitable, and unjust:

(a) The commission is without jurisdiction to make said order.

(b) Said order is not uniform in its application or effect, and works a preference for those against whom an order has not been made and for those over whom the commission has not sought to exercise its jurisdiction.

(c) The order of the commission tends to restrain and restrict trade, restrict competition, and produce a monopoly.

(d) The order of the commission is against public interest.

10. The commission erred in assuming that the proceeding herein would be to the interest of the public.

11. The commission erred in issuing and promulgating its order herein against respondent until it had heard and determined all the causes of like character pending before the commission.

Respondent therefore respectfully moves the commission that it be granted a rehearing in this cause; that the commission review said cause and its order herein; and that the commission set aside its said order to cease and desist.

185 Respondent also prays that it may be given opportunity to be heard on this motion, either orally or by written brief, or both; and that in the interim said order to cease and desist, and the operation and effect thereof, be suspended.

Dated at Chicago, Illinois, this 11th day of February, 1920.

(Signed) EDW. H. CHANDLER,
Tulsa, Oklahoma.
ROY T. OSBORN,
111 West Washington St., Chicago, Ill.
W. RAY ALLEN,
111 West Washington St., Chicago, Ill.
Attorneys for the Respondent, Sinclair Refining Company.

TO THE SECRETARY,
Federal Trade Commission:

Please direct all communications to Roy T. Osborn, counsel, Sinclair Refining Company, 111 West Washington St., Chicago, Illinois.

Federal Trade Commission. Docket No. 334. Section IX. Copy of respondent's motion to suspend order to cease and desist. Dated February 11, 1920.

UNITED STATES OF AMERICA,
Before Federal Trade Commission:

FEDERAL TRADE COMMISSION
v.
SINCLAIR REFINING COMPANY. } Docket No. 334.

Motion to suspend order to cease and desist.

Comes now the respondent, Sinclair Refining Company, a Maine corporation, and for the following reasons and on the following grounds respectfully moves the honorable the Federal Trade Commission for an order suspending the commission's order to cease and desist, heretofore made and entered herein:

186 1. The respondent has filed herein motion praying that the commission grant a rehearing in this proceeding and upon such rehearing review and set aside its said order to cease and desist. Respondent respectfully submits that pending the hearing and consideration of such motion the operation of said order be suspended by the commission.

2. The contracts of the respondent, which were the subject of the complaint herein, are approximately five hundred (500) in number and are distributed over approximately sixteen (16) different States. In operating under said contracts the respondent encounters numerous competitors, some of which are without the jurisdiction of the commission, and others against which the commission has made no order to cease and desist.

3. The order to cease and desist was made and entered October 14, 1919. Respondent in good faith prepared a form of contract which it regarded as being in strict compliance with said order to cease and desist, and which it proposed to substitute for those contracts which were the subject of the commission's complaint. Though not required so to do, respondent on November 21, 1919, formally submitted to the commission respondent's said new form of contract and requested an opinion from the commission approving the form so submitted. The commission thereupon took the same under advisement.

4. Said order to cease and desist allowed respondent four (4) months from the date thereof to enter into new contracts or agreements in compliance therewith and respondent proceeded in good faith to secure the cancellation of existing contracts with those holding its pumps and equipment and to substitute therefor contracts upon the form submitted to the commission upon a rental basis representing a reasonable profit upon the fair value of such equipment and upon the cost of the installation thereof, and respondent has succeeded in securing the cancellation of a number of such original contracts and the execution of new contracts on the form submitted to the commission and on the rental basis hereinabove specified.

5. Respondent is in receipt of a communication from the Honorable Claude R. Porter, chief counsel for the commission, dated January 17, 1920, advising that in the judgment of the commission the contract as submitted is not free from objections, and is open to some of the same objections as were recently determined
187 by the commission to apply to the contracts heretofore used by the respondent, but such communication does not specify wherein the form of contract submitted is not in accordance with the requirements of the said order.

6. The commission having indicated that respondent's submitted contract is objectionable, and respondent having presented to the commission a motion for a rehearing and review of the above-entitled cause, respondent respectfully represents that the commission should suspend its order to cease and desist pending a consideration of such motion to review.

7. Upon information and belief respondent states as follows:

A. Complaints were issued by the commission against many of respondent's competitors on or about the date complaint was issued against respondent, to wit, July 18, 1919.

B. In many of these causes no order to cease and desist has been issued, although such order has issued against respondent.

C. Regardless of the order so issued, and notwithstanding the complaints filed against them, some of respondent's competitors, against which no order has yet issued, continue to engage in the business of leasing and loaning equipment in manner and form complained of by the commission.

8. The conditions set forth in subdivision 7 hereof place respondent on an inequality with its competitors and deprive it of commercial opportunities and priviieges enjoyed by them, both as to old and new business. It is insisted this situation should not obtain.

Dated at Chicago, Illinois, this 11th day of February, 1920.

(Signed) EDW. H. CHANDLER,
Tulsa, Oklahoma,
ROY T. OSBORN,
111 West Washington Street, Chicago, Illinois,
W. RAY ALLEN,
111 West Washington Street, Chicago, Illinois,
Attorneys for the Respondent, Sinclair Refining Company.

TO THE SECRETARY,
Federal Trade Commission:

Please direct all communications to Roy T. Osborn, counsel, Sinclair Refining Company, 111 West Washington Street, Chicago, Illinois.

188 Federal Trade Commission. Docket No. 334. Section X. Copy of respondent's application for extension of time to comply with order to cease and desist. Dated March 2, 1920.

UNITED STATES OF AMERICA,
Before Federal Trade Commission:

FEDERAL TRADE COMMISSION *vs.* SINCLAIR REFINING COMPANY.	Docket No. 334.

Application for extension of time to comply with order to cease and desist.

Comes now the respondent, Sinclair Refining Company, a Maine corporation, and for the following reasons and on the following grounds respectfully moves the honorable the Federal Trade Commission as follows:

1. October 14, 1919, the commission made an order in the above-entitled cause directing respondent to cease and desist. As to pumps and tanks and equipment as were then leased by respondent contrary to the findings and order of the commission, the respondent was granted four months from the date of said order to enter into new contracts or agreements with respect to the same, and within twenty days after the expiration of said four months' period respondent was by said order required to report in writing to the commission fully setting forth the nature of the changes made in the conduct of its business with respect to the subject matter involved in said order.

2. It is a matter of evidence in this cause that respondent's contracts, which were the subject of the complaint herein, are approximately five hundred (500) in number and are distributed over approximately sixteen (16) different States.

3. It has proven a physical impossibility for respondent to
189 comply fully and completely with the order of the commission in respect to all of respondent's said contracts, although it has done so with a large percentage thereof.

4. Respondent has filed herein a motion for an order of the commission suspending the commission's said order to cease and desist.

5. Respondent has filed herein a motion praying that the commission grant a rehearing in this proceeding, and upon such rehearing that it review and set aside its said order to cease and desist.

Respondent therefore respectfully moves the commission that it be relieved from making and filing the report required by said order within said twenty-day period immediately succeeding the four months extending from and after October 14, 1919, pending action

by the commission on respondent's said motions referred to in subdivisions Nos. 4 and 5 hereof.

Dated at Chicago, Illinois, this 2nd day of March, 1920.

(Signed) EDW. H. CHANDLER,
Tulsa, Oklahoma,
ROY T. OSBORN,
111 West Washington St., Chicago, Illinois,
W. RAY ALLEN,
111 West Washington St., Chicago, Illinois,
Attorneys for the Respondent Sinclair Refining Company.

To the SECRETARY,
Federal Trade Commission:

Please direct all communications to Roy T. Osborn, counsel, Sinclair Refining Company, 111 West Washington St., Chicago, Ill.

Federal Trade Commission. Docket No. 334. Section XI. Copy of commission's order denying motion of respondent for a rehearing and review and to set aside order to cease and desist. Dated March 17, 1920.

[90] UNITED STATES OF AMERICA,
Before Federal Trade Commission, ss:

At a regular session of the Federal Trade Commission, held at its office in the city of Washington, D. C., on the 17th day of March, A. D. 1920.

Present: Victor Murdock (chairman), Huston Thompson, William B. Colver, Nelson B. Gaskill, Jno. Garland Pollard, commissioners.

FEDERAL TRADE COMMISSION
vs.
SINCLAIR REFINING COMPANY. } Docket No. 334.

Whereas the above respondent, Sinclair Refining Company, did on March 6th, 1920, by its attorneys, Edward H. Chandler, Roy T. Osborn, and W. Ray Allen, file a written motion for a rehearing and review of this case and to set aside the order to cease and desist herein, dated the 14th day of October, A. D. 1919; and

Whereas, upon consideration of the whole record, no good and sufficient reason appears why the said motion should be granted; it is therefore

Ordered, on this 17th day of March, A. D. 1920, that the motion of the respondent for a rehearing and review and to set aside the said order to cease and desist be, and the same is hereby, denied.

By the commission:

[SEAL.] J. P. YODER, *Secretary.*

Federal Trade Commission. Docket No. 334. Section XII. Co
of commission's order denying motion of respondent to suspe
order to cease and desist. Dated March 17, 1920.

191 UNITED STATES OF AMERICA,
Before Federal Trade Commission, ss:

At a regular session of the Federal Trade Commission, held at
office in the city of Washington, D. C., on the 17th day of Mar
A. D. 1920.

Present: Victor Murdock (chairman), Huston Thompson, Willi
B. Colver, Nelson B. Gaskill, Jno. Garland Pollard, commissioners

FEDERAL TRADE COMMISSION
vs.
SINCLAIR REFINING COMPANY. } Docket No. 334.

Whereas the above respondent, Sinclair Refining Company, did
March 6th, 1920, by its attorneys, Edward H. Chandler, Roy
Osborn, and W. Ray Allen, file a written motion to suspend t
order to cease and desist herein, dated the 14th day of Octob
A. D. 1919; and

Whereas, upon consideration of the whole record, no good a
sufficient reason appears why the said order to cease and des
should be suspended: it is therefore

Ordered, on this 17th day of March, A. D. 1920, that the moti
of the respondent to suspend the said order to cease and desist b
and the same is hereby denied.

By the commission:

[SEAL.] J. P. YODER, *Secretary.*

Federal Trade Commission. Docket No. 334. Section XIII. Co
of commission's order granting respondent an extension of time
which to comply with order to cease and desist. Dated March
1920.

192 UNITED STATES OF AMERICA,
Before Federal Trade Commission, ss:

At a regular session of the Federal Trade Commission, held at t
office in the city of Washington, D. C., on the 17th day of Marc
A. D. 1920.

Present: Victor Murdock (chairman), Huston Thompson, Willia
B. Colver, Nelson B. Gaskill, Jno. Garland Pollard, commissioners.

FEDERAL TRADE COMMISSION
vs.
SINCLAIR REFINING COMPANY. } Docket No. 334.

Whereas the above respondent, Sinclair Refining Company, di
on March 6th, 1920, by its attorneys, Edward H. Chandler, Roy

sborn, and W. Ray Allen, file a written motion for extension of me to comply with the order to cease and desist herein, dated the th day of October, 1919; and

Whereas, in and by said order to cease and desist, the respondent as allowed four months from the date of said order, namely, the th day of October, A. D. 1919, in which to enter into new contracts agreements, and was further directed to file a report in writing thin 20 days after the expiration of the time allowed in which id respondent should comply with said order to cease and desist; nd

Whereas, upon consideration of the whole record, good reasons ppear why the extension applied for should be granted; it is there-ore

Ordered, that the said motion be and the same hereby is granted, nd the respondent's time to make and file the report required by id order to cease and desist be, and the same hereby is, extended or 60 days from the 5th day of March, A. D. 1920.

By the commission:

[SEAL.] J. P. YODER, *Secretary.*

United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, Clerk of the United States Circuit Court f Appeals for the Seventh Circuit, do hereby certify that the fore-oing printed pages, numbered from 1 to 192, inclusive, contain a true opy of the printed original petition to review order of Federal Trade ommission and the proceedings before the Federal Trade Commis-ion, printed under my supervision and filed November 19, 1920, on hich this case was heard and determined, and the order entered on lay 3rd, 1920, authorizing the filing and service of petition to re-iew order of Federal Trade Commission, in the case of Sinclair Re-ining Company, a corporation, petitioner, vs. Federal Trade Com-ission, respondent, No. 2838, October Term, 1919, as the same re-ains upon the files and records of the United States Circuit Court f Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the al of said United States Circuit Court of Appeals for the Seventh ircuit, at the City of Chicago, this thirteenth day of October A. D. 21.

[SEAL.] EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh District.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United tates court room in the city of Chicago in said Seventh Circuit on e seventh day of October, 1919, of the October term in the year of ur Lord one thousand nine hundred and nineteen and of our Inde-ndence the one hundred and forty-fourth.

And afterwards, to wit, on the third day of May, 1920, in t October term aforesaid, an order was entered authorizing the fil and service of a petition to review order of Federal Trade Comm sion, which said order is not copied here nor made a part of t transcript, as the same appears on page one of the printed ori nal petition to review order of Federal Trade Commission, etc., c tified herewith.

And afterwards, on the same day, to wit, on the third day of Ma 1920, in the October term aforesaid, there was filed in the office of t clerk of this court a certain petition to review order of Federal Tra Commission, which said petition is not copied here nor made a pa of this transcript, as the same appears on page two (2) of the print original petition to review order of Federal Trade Commission, et certified herewith.

And afterwards, to wit, on the tenth day of May, 1920, in the Oc ber term last aforesaid, there was filed in the office of the clerk this court a certain acceptance of service of petition and of ord which said acceptance is in the words and figures following, to w

195 In the United States Circuit Court of Appeals for the Seve Circuit.

SINCLAIR REFINING COMPANY, A CORPORATION, PETITIONER,
vs
FEDERAL TRADE COMMISSION, RESPONDENT. } No. 28

Acceptance of service of petition and of order.

Federal Trade Commission, respondent, hereby accepts service a acknowledges receipt of a certified copy of petition to review or of Federal Trade Commission in the above styled and numbe proceeding, together with order bearing date May 3rd, 1920, a thorizing the filing of said petition and the service thereof up respondent, and directing respondent to forthwith file in said co a transcript of the record in a cause pending before respond styled, "Federal Trade Commission v. Sinclair Refining Compan bearing docket No. 334.

Dated at Washington, District of Columbia, this sixth day May, 1920.

FEDERAL TRADE COMMISSION,
By CLAUDE R. PORTER,
Chief Counsel.

(Endorsed:) Filed May 10, 1920. Edward M. Holloway, clerk.

At a regular term of the United States Circuit Court of Appe for the Seventh Circuit, begun and held in the United States cou room, in the city of Chicago, in said Seventh Circuit on the fifth da of October, 1920, of the October term in the year of our Lord o

usand nine hundred and twenty and of our Independence the one hundred and forty-fifth.

And afterwards, to wit, on the seventeenth day of November, 1920, in the October term last aforesaid, came the petitioner, by its counsel, Mr. Roy T. Osborn and Mr. W. Ray Allen, and filed in the office of the clerk of this court their appearance, which said appearance is in the words and figures following, to wit:

ited States Circuit Court of Appeals for the Seventh Circuit.

(October Term, 1919.)

SINCLAIR REFINING COMPANY, A CORPORATION, PETITIONER,
vs.
FEDERAL TRADE COMMISSION, RESPONDENT. } No. 2838.

The clerk will enter my appearance as counsel for the petitioner.

ROY T. OSBORN,
W. RAY ALLEN.

(Endorsed:) Filed Nov. 17, 1920. Edward M. Holloway, clerk.

And afterwards, to wit, on the twenty-fourth day of November, 20, in the October term last aforesaid, came the respondent, by its unsel, Mr. Adrien F. Busick and Mr. E. W. Burr, and filed in the ce of the clerk of this court their appearance, which said appear- e is in the words and figures following, to wit:

ited States Circuit Court of Appeals for the Seventh Circuit.

(October Term, 1920.)

SINCLAIR REFINING COMPANY, PETITIONER,
vs
EDERAL TRADE COMMISSION, RESPONDENT. } No. 2838.

The clerk will enter my appearance as counsel for the respondent.

ADRIEN F. BUSICK,
Acting Chief Counsel.
and E. W. BURR,
Attorney for Respondent.

(Endorsed:) Filed Nov. 24, 1920. Edward M. Holloway, clerk.

And afterwards, to wit, on the seventh day of December, 1920, in the October term last aforesaid, there was filed the office of the clerk of this court a certain motion of petitioner r extension of time within which to file brief, which said motion in the words and figures following, to wit:

In the United States Circuit Court of Appeals for the Seventh Circuit.

SINCLAIR REFINING COMPANY, A CORPORATION, petitioner, *vs.* FEDERAL TRADE COMMISSION, RESPONDENT. } No. 2838.

Motion of petitioner for extension of time within which to file brief.

Comes now your petitioner, Sinclair Refining Company, a corporation, and respectfully states that under the rules of this court it is required to file its brief herein on or before December 10, 1920; that on December 4, 1920, it sent a telegram to the Honorable Charles R. Porter as chief counsel for the Federal Trade Commission at Washington, D. C., reading as follows:

"Our brief Sinclair Refining Company versus Federal Trade Commission number two eight three eight pending Court of Appeals Seventh Circuit required to be filed tenth inst. Will you kindly consent that court extend time at least twenty days? Please wire answer my expense care our Company, Conway Building, Chicago"—

to which it received in reply a telegram on December 6, 1920, reading as follows:

"Consent to extension of such time as you need Court of Appeals case. Porter resigned. Busick acting. (Signed) Busick."

Wherefore, your petitioner prays that it be granted an
198 extension of time to and including the 10th of January, A. D. 1921, within which to file its brief in this cause.

EDW. H. CHANDLER, *Tulsa, Oklahoma,*
ROY T. OSBORN, *Chicago, Illinois,*
W. RAY ALLEN, *Chicago, Illinois,*
Counsel for Petitioner.

STATE OF ILLINOIS,
County of Cook, ss:

Roy T. Osborn, being duly sworn, deposes and says that he is one of counsel of petitioner in the above-entitled cause; that he has read and is familiar with the matters and things set out in the above and foregoing motion, and that the same are true as he verily believes.

ROY T. OSBORN.

Subscribed and sworn to before me, a notary public, this 7th day of December, A. D. 1920.

[SEAL.] A. C. JONES, *Notary Public.*

My commission expires November 23, 1923.

(Endorsed:) Filed Dec. 7, 1920. Edward M. Holloway, clerk.

And afterwards, on the same day, to wit, on the seventh day of December, 1920, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

TUESDAY, DECEMBER 7, 1920.

Court met pursuant to adjournment.

Present: Hon. Francis E. Baker, circuit judge, presiding: Hon. Samuel Alschuler, circuit judge; Hon. George T. Page, circuit judge; Edward M. Holloway, clerk.

Before Hon. Samuel Alschuler, Circuit Judge.

SINCLAIR REFINING COMPANY
vs.
FEDERAL TRADE COMMISSION. } 2838.

Petition to review order of the Federal Trade Commission.

On motion of counsel for petitioner, counsel for respondent consenting thereto, it is ordered that the time for filing brief for respondent in this cause be, and the same is hereby extended to January 10, 1921.

And afterwards, to wit, on the twenty-fifth day of January, 1921, in the October term last aforesaid, there was filed in the office of the clerk of this court a certain motion for extension of time to file brief for respondent, which said motion is in the words and figures following, to wit:

In the United States Circuit Court of Appeals for the Seventh Circuit.

SINCLAIR REFINING COMPANY, A CORPORATION, PETITIONER,
vs.
FEDERAL TRADE COMMISSION, RESPONDENT. } No. 2838.

Motion of respondent for extension of time within which to file brief.

Comes now the respondent above named, the Federal Trade Commission, and respectfully states that under the rules of this court it is required to file and serve its brief herein on or before January 30th, 1921.

That in view of the length of time required for printing the said brief of respondent through official channels as required by law and the additional time required for the course in mails, it is impracticable for respondent to comply as regards the filing and service of its brief on the date last above named.

Respondent shows further that on January 19th respondent, through its acting chief counsel, wrote to counsel for the petitioner as follows:

"The period of 20 days for the preparation of reply brief in the Seventh Circuit of the United States Circuit Court of Appeals

is very short for this commission, in view of the fact that we are obliged by law to do our printing through the Government Printing Office, which requires six days for the work.

"This office is busily engaged in the preparation of the respondent's brief in the above-entitled case, but it is practically impossible to complete and print our written argument within the time. Will you kindly consent to an extension of time for the filing of our brief of 15 days, which will bring the filing date to Monday, Feb. 14th.

"We are exceedingly anxious to submit written and oral argument in this case at the earliest practicable date and anticipate not consuming the entire 15 days additional.

"If you will kindly let us hear from you we shall take the matter up with the court."

and is to-day in receipt of telegram consenting to the proposed extension of 15 days in the following terms:

"Agreeable to petitioner that court extend respondent's time for filing brief in Sinclair versus Commission, Circuit Court of Appeals, Seventh Circuit.

"(Signed) ROY T. OSBORN."

Wherefore, the respondent prays that there be granted an extension of time to and including February 14th, 1921, within which to file its brief herein.

ADRIEN F. BUSICK,
Acting Chief Counsel, Federal Trade Commission.

201 DISTRICT OF COLUMBIA,
City of Washington, ss:

Adrien F. Busick, being duly sworn, deposes and says that he is acting chief counsel of the respondent in the above-entitled cause, that he has read and is familiar with the matters and things set out in the foregoing motion, and that the same are true as he verily believes.

ADRIEN F. BUSICK.

Subscribed and sworn to before me, a notary public in and for the District of Columbia, city of Washington, this 21st day of January, 1921.

[SEAL.] WARREN R. CHOATE, *Notary Public.*

My commission expires April 5, 1923.

(Endorsed:) Filed Jan. 25, 1921. Edward M. Holloway, clerk.

And afterwards, on the same day, to wit, on the twenty-fifth day of January, 1921, in the October term last aforesaid, the following further proceedings were had and entered of record to wit:

TUESDAY, JANUARY 25, 1921.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present: Hon. Francis E. Baker, circuit judge, presiding; Hon. Samuel Alschuler, circuit judge; Hon. Evan A. Evans, circuit judge; Hon. George T. Page, circuit judge; Edward M. Holloway, clerk; John J. Bradley, marshal.

Before: Hon. Francis E. Baker, circuit judge; Hon. Samuel Alschuler, circuit judge; Hon. Evan A. Evans, circuit judge.

302 SINCLAIR REFINING COMPANY, a corporation, *vs.* FEDERAL TRADE COMMISSION. } 2838. Original petition to review an order of the Federal Trade Commission.

On application of counsel for respondent, it is ordered by the court that the time to file brief for the respondent in this cause be, and the same is hereby, extended to and including February 14, 1921.

And afterwards, to wit, on the fourteenth day of March, 1921, in the October term last aforesaid, there was filed in the office of the clerk of this court a certain petition that the cause be set for hearing, which said petition is in the words and figures following, to wit:

In the United States Circuit Court of Appeals for the Seventh Circuit.

THE SINCLAIR REFINING COMPANY, PETITIONER, *v.* FEDERAL TRADE COMMISSION, RESPONDENT. } No. 2838.

Petition for advancement upon the calendar and fixing of a day certain for argument.

To the Honorable Circuit Court of Appeals:

Come now the petitioner and the respondent in the above-entitled cause by their respective counsel and show to the court as follows:

That this case is one of some twelve causes of action arising as the result of petitions for review of orders issued by the respondent to numerous corporations engaged in the gasoline business, other cases being pending in the Second, Third, and Sixth Circuits of the United States Circuit Court of Appeals;

That it is highly important to the gasoline industry that there be certainty as early as possible with regard to the legality of certain practices now in controversy and that the same counsel for the respondent will necessarily represent the Federal Trade Commis-
303 sion in all of the cases above mentioned and now pending; that the cases in the Sixth Circuit, some six in number, have been set for May 5th; that another engagement is set in this court for April 26th;

Hence it will greatly serve the convenience of counsel and expedite a settlement of the general controversy, at the same time enabling counsel for the respondent to meet all engagements, if the court

can consistently and will set the above-entitled cause for April 27 or April 28th, 1921.

That the court's attention is respectfully called to that portion of section 5 of the act of Congress approved September 26, 1914, creating a Federal Trade Commission, and relating to proceedings of the nature of the present case, which portion of the statute reads as follows:

"Such proceedings in the Circuit Court of Appeals shall be given precedence over other cases pending therein and shall be in every way expedited."

Wherefore the undersigned petition the court that hearing in the case be set for a day certain and if practicable, for April 27th or 28th.

ROY T. OSBORN,
Attorney for the Petitioner.
ADRIEN F. BUSICK,
Acting Chief Counsel for the Respondent Commission.

Dated this 12 day of March, 1921.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Adrien F. Busick, being first duly sworn, depose and say that I have read the foregoing petition, know the contents thereof of my own knowledge, and that the same is true.

ADRIEN F. BUSICK.

Subscribed and sworn to before me this 12th day of March, 19

[SEAL.] WARREN R. CHOATE,
Notary Public within and for the District of Columbia.

My commission expires April 5, 1923.

(Endorsed:) Filed Mar. 14, 1921. Edward M. Holloway, clerk.

204 And afterwards, on the same day, to wit, on the fourteenth day of March, 1921, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

MONDAY, MARCH 14, 1921.

Court met pursuant to adjournment.

Present: Hon. Francis E. Baker, circuit judge, presiding; Hon. Samuel Alschuler, circuit judge; Hon. George T. Page, circuit judge; Edward M. Holloway, clerk.

Before Hon. Francis E. Baker, presiding judge.

SINCLAIR REFINING COMPANY *vs.* FEDERAL TRADE COMMISSION.	2838. Original petition to review an order of the Federal Trade Commission.

This 14th day of March, 1921, upon verified petition on behalf of both parties hereto by their respective counsel, it appearing that

account of numerous court engagements it is highly important and will greatly minister to the convenience of counsel for the respondent that a day certain for oral argument in the above-entitled case be set and that the time when argument can be presented without undue inconvenience is limited, and it appearing further that proceedings such as the present cause are entitled to a preference on the calendar by act of Congress:

Now therefore it is hereby ordered that the above-entitled case be set for oral argument on a day certain, to wit, the 27th day of April, 1921.

And afterwards, to wit, on the twenty-seventh day of April, 1921, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

WEDNESDAY, APRIL 27, 1921.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present: Hon. Francis E. Baker, circuit judge, presiding; Hon. Samuel Alschuler, circuit judge; Hon. Evan A. Evans, circuit judge; Hon. George T. Page, circuit judge; Edward M. Holloway, clerk; John J. Bradley, marshal.

Before Hon. Francis E. Baker, circuit judge; Hon. Evan A. Evans, circuit judge; Hon. George T. Page, circuit judge.

SINCLAIR REFINING COMPANY, a corporation, *vs.* FEDERAL TRADE COMMISSION.	2838. Original petition to review order of Federal Trade Commission.

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel and on oral arguments by Mr. Roy T. Osborn, counsel for petitioner, and by Mr. Eugene W. Burr, counsel for respondent, and the court having heard the same takes this matter under advisement.

And afterwards, to wit, on the eighth day of September, 1921, in the October term last aforesaid, there was filed in the office of the clerk of this court the opinion of the court, which said opinion is in the words and figures following, to wit:

In the United States Circuit Court of Appeals for the

Seventh Circuit.

October term, 1920, April session, 1921.

SINCLAIR REFINING COMPANY, a corporation, petitioner, *vs.* FEDERAL TRADE COMMISSION, respondent.	No. 2838. Original petition to review order of Federal Trade Commission.

Before Baker, Evans, and Page, circuit judges.

Opinion by Page, Cir. J.

This is an original petition against Federal Trade Commission, hereinafter called respondent, to review an order made in a proceeding wherein it had filed its complaint against Sinclair Refining Company, hereinafter called petitioner, the substance of which complaint was that petitioner, being engaged in the business of purchasing and selling oil and gasoline and the leasing and loaning of oil pumps, storage tanks or containers and their equipment, leased, for a nominal consideration, said oil pumps, storage tanks or containers and their equipment to persons who purchased oil from petitioner, with the understanding that the same should not be used by the lessees of the pumps and other equipment to hold or pump the oil of any competitor. It was also charged that the leases were made on consideration that lessees should not purchase or deal in the products of a competitor.

In answer to that complaint, petitioner set out the contract
207 which was found by the Federal Trade Commission to be the uniform contract by which such equipment was leased the portions of which, material here, are:

"1. The above-described equipment shall be used by party of the second part" (purchaser of gasoline) "for the sole purpose of storing and handling the gasoline supplied by party of the first part.

* * * * * * *

"6. This agreement shall terminate forthwith upon the sale or other disposition of said premises by party of the second part, and in any event upon the expiration of ------ months from the date hereof; * * * provided, however, that the party of the second part shall have the right and option at such time to purchase said equipment by paying therefor the sum of ------."

After the findings of fact were made, the order to cease and desist, here complained of, was entered.

The question, plainly stated, is: Does the leasing, under the terms of the contract in evidence, at a nominal charge, of containers and pumps by petitioner to purchasers of its gasoline constitute an "unfair method of competition," as those words are used in section 5 of the Federal Trade Commission act of Sept. 26, 1914, or may the effect of such leasing be to substantially lessen competition and tend to create for the respondent a monopoly in the business of selling petroleum products in violation of section 3 of the Clayton Act?

This identical matter was recently decided by the Court of Appeals in the Second Circuit in The Texas Company v. Federal Trade Commission, and Standard Oil Company of New York v. Federal Trade Commission, adversely to the respondent's contention here.

(1) "Unfair methods of competition" have been discussed by this court in the opinion in Kinney-Rome Company v. Federal Trade Commission (— Fed. Rep., —) just filed.

Neither section relied upon gives the Federal Trade Commission power to regulate trade generally. The jurisdiction under section 5

exists only where there are practices that amount to a fraud in regard to some public or private right; otherwise, they do not, in our opinion, as we said in the Kinney-Rome Case, supra, amount to an unfair method of competition.

In addition to the reasons upon which the decision was
295 based in the Texas Company Case, supra, we are of opinion that petitioner had the undoubted right to furnish any and every purchaser such containers and conveniences to aid him in delivering the gasoline into the possession of the consumer as it might see fit, and at such cost as it might see fit. The right to fix prices is not given to the Federal Trade Commission. The only cases where the question of price has come into consideration have been those wherein the making of a price—in some cases high, in others low—has been used as an element in some fraudulent scheme of oppression. The price which one may put upon that which he has to sell or lease is a matter wholly his own. United States v. Freight Assn., 166 U. S., 290, 320; Sears, Roebuck & Co. v. Federal Trade Com., 258 Fed., 307, 312.

Competition is not an unmixed good. It is a battle for something that only one can get; one competitor must necessarily lose. The weapons in competition are various—superior energy, more extensive advertising, better articles, better terms as to time of delivery, place of delivery, time of credit, interest or no interest, freights, methods of packing, lower prices, more attractive and more convenient packages, superior service, and many others, are and always have been considered proper weapons. Expense attending the use of any weapon, the foolishness of it, the fact that a method is uneconomical, or that the competitor can not meet any method or scheme of competition because it will be ruinous to him to do so, have not, nor has either of them, ever been held unfair. Such things are a part of the strife inherent in competition. Some merchants sell and deliver goods at the counter and you must take them away; others deliver them at your house, or in any town, State or country—that is merely a part of the bargain. Some people deliver a hat in a bag at the store; others deliver it at your house in a fancy box that is used by many purchasers as a container. Petitioner said, "Here is a container and a pump; you may take and use them for the storage and pumping of gasoline bought from us; if you wish to use them otherwise you may and must buy them." In kind, that is nothing more than loaning a barrel, with a faucet in it. The fact that the tank and pump are much more expensive does not make the transaction different, nor unfair. If that is not true, then the law must mean that the Trade Commission is set as a watch on competitors, with the duty and the power to judge what
299 is too fast a pace for some and to compel others to slow up. In other words, to destroy all competition except that which is easy. We are of opinion that Congress did not intend to bestow any such power, and that it did not intend to do more than to

eliminate the almost infinite variety of fraudulent practices from business in interstate commerce.

(2) We are of opinion that there was no violation of section 3 of the Clayton Act. The complaint under that section is that petitioner made leases for the container and pump and fixed the price therefor, "On the condition, understanding, and agreement that the lessee thereof shall not purchase or deal in the products of a competitor or competitors, of respondent" (petitioner).

There is nothing in the evidence nor in the findings of fact by the Federal Trade Commission that supports any such charge. The finding is that there was a uniform contract. There is no word there about purchasing from competitors. The only limitation is that, "The above described equipment shall be used by party of the second part for the sole purpose of storing and handling the gasoline supplied by party of the first part."

But there are other findings, that, taken in connection with the order to cease and desist, very clearly indicate what the commission deemed the real trouble which it desired to reach was, viz,

"That the monetary considerations received by respondent" (petitioner) "do not represent reasonable returns upon the investment in such devices and equipment; and also that such leases and loans of said devices and equipment are made for monetary considerations below the cost of purchasing and vending the same."

And, again,

"That only a small proportion of such lessees as handle similar products of respondent's competitors require or use more than a single pump outfit in the conduct of their said business; that the practice of leasing such devices requires a large capital investment; that many competitors of respondent do not possess sufficient capital and are not able to purchase and lease devices as respondent does, as aforesaid, partly by reason of which such competitors have lost numerous customers to respondent; that the effect of the practice of leasing by contract such equipments, where such contracts con-
210 tain the said provision restricting the use of the same to the storage and handling of respondent's products as aforesaid, may be to substantially lessen competition, etc."

There are two paragraphs of the order to cease and desist, and they are substantially as follows: The substance of the first is that petitioner shall not lease the equipment in question at a rental which will not yield to it a reasonable profit, and the substance of the second is that petitioner shall not enter into or continue to operate under contracts whereby dealers agree that, in consideration for the leasing to them of such equipment, the same shall be used only for storage or handling the product of petitioner.

The necessary conclusion from the above findings and the order entered is: First, that the commission deemed it lawful and proper for it to condemn certain rentals and also to fix and regulate the rentals on the equipment; because the furnishing of such equipment required a large capital investment and because many competitors

of respondents were financially unable to do that same sort of thing. As we have hereinbefore said, Congress did not bestow upon respondent any power to regulate or fix prices (Sears, Roebuck & Co. v. Federal Trade Commission, 258 Fed., 312); nor do we find anything in the law which indicates that it is illegal for one competitor to do that which is beyond the financial ability of another competitor; nor do we find anything that authorizes respondent to regulate competition for that reason. Section 3 does not make it unlawful to make sales or leases, but does make it unlawful to make sales or leases on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in goods, etc., of a competitor where the effect of such lease, condition, agreement, or understanding may be to substantially lessen competition, etc. The above provisions of section 3 were the substance of the unproven charge in respondent's complaint against petitioner, referred to above. It is perfectly clear that that which the commission found was "the uniform contract used by respondent for leasing such devices" contained no provision comparable with or equivalent to the thing prohibited in section 3. We are of opinion that there is nothing in the section that could be construed as preventing petitioner under the circumstances shown in this case, from putting a limitation upon the use of the thing leased. It has long been a practice in real
211 estate leases to include limitations upon the use of the property, and the reasons for doing so are obvious. Such has likewise been the practice in the leasing or hiring of personal property. The reasons for such limitations are even more obvious than those for the placing of them in real estate leases. Some of the reasons are pointed out in the opinion in the Texas Company Case, supra.

(3) In the case, as in the Fruit Growers Express Case (— Fed. Rep., —), decided by this court, opinion filed June 16, 1921, if an order to cease and desist is to stand, the effect of the action of the Federal Trade Commission seems to have been to terminate and destroy the contractual rights of persons not parties to the proceeding.

The order to cease and desist is annulled and set aside.

A true copy.
Teste:

Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

212 And afterwards, on the same day, to wit, on the eighth day of September, 1921, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

THURSDAY, SEPTEMBER 8, 1921.

Court met pursuant to adjournment.

Present: Hon. Samuel Alschuler, circuit judge, presiding; Hon. Evan A. Evans, circuit judge; Hon. George T. Page, circuit judge; Edward M. Holloway, clerk.

Before: Hon. Francis E. Baker, circuit judge; Hon. Evan A. Evans, circuit judge; Hon. George T. Page, circuit judge.

SINCLAIR REFINING COMPANY, a corporation, *vs.* FEDERAL TRADE COMMISSION.	2838. Original petition to review order of Federal Trade Commission.

This cause came on to be heard on the petition of Sinclair Refining Company, a corporation, to review the order to cease and desist entered against said petitioner by the Federal Trade Commission on the fourteenth day of October, 1919, in a cause lately pending before said commission entitled "Federal Trade Commission vs. Sinclair Refining Company," and upon the transcript of the proceedings before the Federal Trade Commission in said cause, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the said order of the said Federal Trade Commission to cease and desist, be, and the same is hereby annulled and set aside.

213 United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten and printed pages, numbered from 1 to 19, inclusive, contain a true copy of the proceedings had and papers filed (except the order entered on May 3, 1920, which appears on page 1 of the printed original petition to review order of Federal Trade Commission, etc., certified herewith, and the petition to review order of Federal Trade Commission, which appears on page 2 of the printed petition to review order of Federal Trade Commission, certified herewith, and the briefs of counsel,) in the case of Sinclair Refining Company, a corporation, petitioner, vs. Federal Trade Commission, No. 2838, October Term, 1919, as the same remains upon the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this thirteenth day of October, A. D. 1921.

[SEAL.] EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

(Indorsed:) United States Circuit Court of Appeals for the Seventh Circuit.

214 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the Honorable the Judges of the United States Circuit Court of Appeals for the Seventh Circuit, Greeting:

Being informed that there is now pending before you a suit in which Sinclair Refining Company is petitioner, and Federal Trade Commission is respondent, No. 2838, which suit was removed into the said Circuit Court of Appeals by virtue of original petition to review order of Federal Trade Commission, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, do hereby
215 command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the tenth day of January, in the year of our Lord one thousand nine hundred and twenty-two.

M. R. STANSBURY,
Clerk of the Supreme Court of the United States.

216 In the Supreme Court of the United States, October Term, 1921.

FEDERAL TRADE COMMISSION, PETITIONER,
v.
SINCLAIR REFINING COMPANY, RESPONDENT,
} No. 630.

Stipulation as to return to writ of certiorari.

It is hereby stipulated by counsel for the parties to the above-entitled cause that the certified copy of the transcript of the record now on file in the Supreme Court of the United States shall constitute the return of the clerk of the United States Circuit Court of Appeals for the Seventh Circuit to the writ of certiorari granted therein.

JAMES M. BECK,
Solicitor General.
RAY T. OSBORN,
Counsel for Respondent.

(Endorsed:) Filed Jan. 16, 1922. Edward M. Holloway, clerk.

UNITED STATES OF AMERICA, *Seventh Circuit, ss:*

In obedience to the command of the foregoing writ of certiorari and in pursuance of the stipulation of the parties, a full copy of which appears above, I do hereby certify and return that the transcript of the record filed with the application to the Supreme Court of the United States for a writ of certiorari in the case of Sinclair

Refining Company, a corporation, petitioner, vs. Federal Trade Commission, respondent, No. 2838, is a full, true, and complete transcript of the record upon which said cause was heard in the United States Circuit Court of Appeals for the Seventh Circuit, together with all proceedings in said court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 16th day of January, A. D. 1922.

[SEAL.] EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

(Indorsed:) File No. 28,585. Supreme Court of the United States. No. 630, October Term, 1921. Federal Trade Commission vs. Sinclair Refining Company. Writ of certiorari. Filed Jan. 16, 1922. Edward M. Holloway, Clerk.

(Stamped:) Received Jan. 21, 1922. Office of the Clerk Supreme Court U. S.

217 (Indorsed:) File No. 28585. Supreme Court U. S., October Term, 1921. Term No. 630. Federal Trade Commission, petitioner, vs. Sinclair Refining Co. Writ of certiorari and return. Filed Jan. 21, 1922.

○